

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

8672

11309 SENATE RESOURCES

## **Alaska Municipal League**

### **RESOLUTION 2004 –12**

#### **A Resolution Urging the Governor and Legislature to Establish Consistent Processes for Community Participation in Resource Development Management**

**WHEREAS**, coal-bed methane production in Alaska presents a great opportunity to ensure that United States energy needs can be met through development of Alaskan resources; and

**WHEREAS**, Alaskan coal-bed methane resource development will ensure the State's economic vitality and contribute to jobs, economic growth and development of State natural resources for the betterment of all Alaska residents; and

**WHEREAS**, exploration and development of coal-bed methane can be conducted in a manner which will ensure continued quality of life enjoyed by all Alaskans, including the enjoyment of the natural resources, harvest of fish and game, recreation and access to public lands; and

**WHEREAS**, coal-bed methane can be produced using best management practices that recognize the unique landscape, logistics and environments throughout Alaska, while minimizing the detrimental impacts to the air and water and to the abundant fish and wildlife resources that depend on this environment; and

**WHEREAS**, the Alaska Municipal League believes that the most effective laws and regulations are crafted through a partnership between State and local governments, and through the active participation of Alaska's citizens; and

**WHEREAS**, the Alaska Municipal League believes local control is a vital component of maintaining strong Alaskan communities, local governments in Alaska want to be fully engaged in the public process associated with resource extraction decisions made by the state and federal governments.

**NOW, THEREFORE, BE IT RESOLVED** by the Alaska Municipal League that the Governor and Legislature are urged to establish Statewide Coal-Bed Methane policies that ensure efficient and economic development of this important resource, while protecting property owners' rights and providing for the partnership of local citizens and governments in developing laws and regulations necessary for the protection of water, air, land use and quality of life of all Alaskans.

**Subject: Senate Bill 312 comments**  
**Date:** Wed, 31 Mar 2004 11:41:05 -0900  
**From:** "Sleetmute Traditional Council" <STCadmin@starband.net>  
**Organization:** Sleetmute Traditional Council  
**To:** <senator\_scott\_ogan@legis.state.ak.us>

Linda Hay

Senate Resources Committee

Re: SB 312

Please give copies of these comments on SB 312 to each member of the committee.

If passed, with a few changes, this bill will do a lot of good in putting back some regulatory protections for citizens and the environment of the state. We are glad that you realize that a best interest finding should be required. We would also like to see public input given more weight when an area is considered for leases approval. We know that certain areas that are sensitive or critical wildlife and fish habitat, and sensitive subsistence areas in Alaska should not be considered for coal bed methane development. It would be good to see the Resources Committee include real, farsighted protections for what could possibly become nonrenewable resources in certain parts of Alaska.

One part of the bill that we don't understand is why leases under application should be exempted. The reason for the moratorium was not to issue any more leases until the state had come up with some new regulations that addressed some of the problems for people and the environment under the present program. The moratorium went into effect in October, 2003, but any lease applications that were submitted to DNR before January, 2004 would still fall under the present program if granted. That means that a lease application dated after the moratorium but before Jan, 2004 would also fall under the present shallow gas program.

In these instances, since the leases have not been granted, what sense is there in granting any lease without the protective regulations your committee is working on putting in place right now? No lease has been granted – the state is under no obligation. There is no buyback to consider here.

There have been 4 leases applied for in our region – in the Holitna Basin. We are against any CBM development in our area, but if it does come to pass, we want every protection and safeguard possible for our resources and the welfare of our families.

We urge you to amend this bill to include leases that are under application.

Sincerely,

Pete Mellick, President

Sleetmute Traditional Council

March 8, 2004

Dear Senator Ogan and Senate Resources Committee Members:

As a person who lives in the Valley and who has followed the CBM issue closely over the last few months, I feel that in order to resolve the issues that CBM development create in residential areas in Alaska, sweeping changes and protections to property owners are necessary.

Below is a list of nine rights and protections that I think are necessary to actually protect property owners. If the legislature would implement these changes, I feel CBM and private property owners could successfully coexist.

**1) SURFACE OWNER RIGHTS**

Require surface owner consent prior to any exploration, development or production on private property - in other words, a surface owner right of refusal.

Allow private property owners the right to lease the subsurface of their own property before processing a lease application from a coalbed methane (shallow gas) developer.

Require the Department of Natural Resources ("DNR"), the Alaska Oil and Gas Conservation Commission ("AOGCC"), and the Department of Environmental Conservation ("DEC") to establish formal appeal processes that allow all interested parties to appeal a lease decision, whether the lease is on public or private property.

Require the state to provide a legal fund that surface owners can access to hire appropriate legal counsel, or restrict the amount that may be spent on legal representation to \$5,000 for each side.

Provide private property owners with protection from retaliatory lawsuits from developers.

**2) MORATORIUM AND BUYBACK**

Require a statewide moratorium on granting further coalbed methane (shallow gas) leases until all the following provisions of the Property Owners' Bill if Rights are enacted and apply to all leases.

A buyback of all coalbed methane (shallow gas) leases already granted by the state.

### **3) PROPER NOTICE**

Provide 90 days actual notice of coalbed methane (shallow gas) lease applications to all landowners within five miles of a proposed coalbed methane (shallow gas) lease before a best interest finding process begins. Notice by registered mail must also be provided to local, municipal, and tribal entities that have jurisdiction within the proposed lease areas. Notice by publication must also be provided at local post offices, in a local newspaper and a newspaper of statewide circulation. All notices described above must include a detailed map of the affected area proposed for lease.

### **4) BEST INTEREST FINDING**

Provide a best interest finding process that requires the state to analyze the economic, environmental, and social costs and benefits of potential coalbed methane (shallow gas) lease applications. This shall include taking of public testimony and expert reports to determine if, and under what conditions, granting the lease application serves the needs and interest of the State of Alaska, and the best interests of the local community where the development is proposed. DNR (including Habitat Division -formerly ADF&G), AOGCC, and DEC evaluate and provide responses to all issues raised in public written and oral testimony.

The best interest finding process must ensure that revenues from licensing, leasing, and royalties for coalbed methane (shallow gas) are maximized to the fullest extent, comparable to other markets.

The best interest finding process must re-institute a competitive bidding process for all coalbed methane (shallow gas) leases.

### **5) BASELINE STUDIES**

Require the State of Alaska to measure baseline water quality and quantity in all areas proposed for leasing prior to granting any lease application. This includes surface and well waters that may be affected.

Require the State of Alaska to measure baseline methane seepage, hydrological, and geological data in all areas proposed for leasing prior to granting any lease application.

Require the State of Alaska to conduct baseline inventory studies of existing fish and wildlife populations to identify sensitive or critical wildlife areas to be excluded from coalbed methane (shallow gas) leasing.

### **6) LOCAL CONTROL**

Ensure that local governmental entities have maximum powers of self government that enable them to regulate coalbed methane (shallow gas) development to protect the health, safety, general welfare, and quality of life for local residents.

**7) PROTECTION OF SENSITIVE HABITATS AND IMPORTANT PUBLIC RECREATIONAL LANDS**

Prohibit coalbed methane (shallow gas) leasing and development in sensitive or critical wildlife areas, particularly those areas used for subsistence and recreational activities.

**8) WATER PROTECTION**

Our precious water resources must be protected. At a minimum the following protections must be put in place:

Prohibit coalbed methane water extraction in groundwater aquifers that are the source of existing or future water wells.

Prohibit the use of toxic hydraulic fracturing fluids.

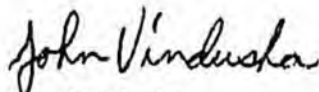
Require the deep-well underground reinjection (below an impermeable geological layer) of all liquids and wastes produced and used during coalbed methane development, including but not limited to, produced water and drilling muds.

**9) NON-WATER STANDARDS**

Require DNR, AOGCC, and DEC to promulgate by December of 2004 enforceable minimum statewide regulations that require best available technology and practices to ensure the health and safety of citizens on the issues of noise, air and water quality, setbacks, use and disposal of any toxics, and surface restoration and reclamation.

New standards must also be established that increase the statewide and per incident bond requirement for all coalbed methane operators and developers to ensure full restoration of the surface. These amounts must be sufficient to provide the full fair market value of any property or business damaged by coalbed methane development.

Please contact me if you have questions. Thanks you for your consideration,



John Vinduska  
HCO4 9153  
Palmer, Alaska 99645  
907 745-4054

**Subject: Property Owners Bill of Rights**

**Date:** Thu, 25 Mar 2004 14:44:13 -0600

**From:** "Jeff Arndt" <cbm@pobox.mtaonline.net>

**To:** <senator\_scott\_ogan@legis.state.ak.us>

**CC:** <rmclean@pobox.alaska.net>, "michelle" <mchurch@mtaonline.net>, <boone@akcache.com>, <jvinduska@hotmail.com>, <whitevan@mtaonline.net>

Jeff Arndt


CBM Coordinator

Friends of Mat-Su

746-0148

[www.gasdrillingmatsu.org](http://www.gasdrillingmatsu.org)

[www.foms.net](http://www.foms.net)

 <a href="#">Ogan Letter.doc</a>	<p><b>Name:</b> Ogan Letter.doc <b>Type:</b> WINWORD File (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message</p>
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Senator\_Scott\_Ogan@legis.state.ak.us

March 24, 2004

Senator Scott Ogan, Chair  
Senate Resources Committee  
Alaska Legislature  
State Capitol, Room 103  
Juneau, AK 99801-1182

Dear Senator Ogan:

Thank you for providing Alaskans an opportunity to testify March 22, 2004, on the Property Owners' Bill of Rights before the Senate Resources Committee.

We were especially encouraged by the testimony of Mr. Jack Chenoweth, of the Legislative Counsel's office. Under questioning from you and Senators Wagner and Seekins, it became clear there are no major barriers to drafting legislative language to put the Property Owners' Bill of Rights into bill form. While Mr. Chenoweth noted certain issues surrounding the property rights and local control elements of the Bill of Rights, he clearly stated these items could be addressed through careful drafting.

We recognize several pieces of legislation relating to coalbed methane have been introduced this session. Yet none addresses the necessary issues as completely as the Bill of Rights. As a result, we look forward to your leadership on this issue, and we anticipate the inclusion of the Bill of Rights legislation as a formal amendment to an existing bill before your committee in the near future.

If you will not be pursuing this course, please let us know why in writing. If we do not hear back from you in the near future, we will presume you will not offer the Bill of Rights this session.

As you know, you have many constituents who are deeply concerned with coalbed methane issues, and these constituents expect meaningful CBM reform this session. The passage of all the elements of the Bill of Rights will provide the necessary protections to correct past mistakes.

Thank you again, and we look forward to hearing from you.

Sincerely,

See you

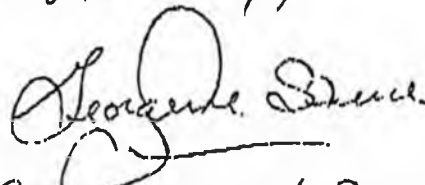
DEAR SENATE RESOURCES COMM.,

PLEASE SUPPORT THE PROPERTY OWNERS BILL OF RIGHTS, IN IT'S ENTIRETY. WE DON'T EXPECT A DOG and PONY SHOW FROM THE VARIOUS AGENCIES. YOU FOLKS CHANGED THE LAWS THAT ALLOWS OUTSIDE CORPORATIONS INTO OUR PRIVATE PROPERTY WITHOUT OUR CONSENT.

YOU FOLKS NEEDS TO CHANGE IT BACK, TESTIMONY BY MR. CHENOWETH LAST MONDAY SAID THAT THIS IS NOT IMPOSSIBLE TO DO. IN THAT LIGHT IT WOULD BE BENEVOLENT TO STRAIGHTEN OUT THIS MESS THAT YOU CREATED.

THE BILL OF RIGHTS SAYS EXACTLY HOW I FEEL. YOUR LAWS DON'T.

YOURS TRULY,



GEORGETTE M. STURE  
3380 S. SHAMROCK ST.  
WASILLA, ALASKA 99687 3/26/2004



# Alaska State Legislature

Please enter into the record my testimony to the S RESOURCE  
committee name  
committee on SB 312, dated 3-26-04  
bill/subject

9-PAGES

Signed: GEORGETTE STURE  
Testifier  
\_\_\_\_\_  
Representing (Optional)  
\_\_\_\_\_  
Mailing Address  
\_\_\_\_\_  
Phone Number

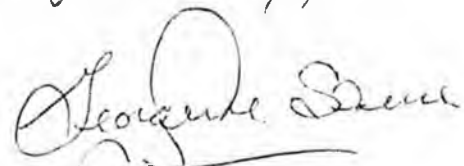
See you

DEAR SENATE RESOURCES COMM.,

PLEASE SUPPORT THE PROPERTY OWNERS BILL OF RIGHTS, IN IT'S ENTIRETY. WE DON'T EXPECT A DOG and PONY SHOW FROM THE VARIOUS AGENCIES. YOU FOLKS CHANGED THE LAWS THAT ALLOWS OUTSIDE CORPORATIONS ONTO OUR PRIVATE PROPERTY WITHOUT OUR CONSENT.

YOU FOLKS NEED TO CHANGE IT BACK. TESTIMONY BY MR. CHENOWETH LAST MONDAY SAID THAT THIS IS NOT IMPOSSIBLE TO DO. IN THAT LIGHT IT WOULD BEHOVE YOU TO STRAIGHTEN OUT THIS MESS THAT YOU CREATED. THE BILL OF RIGHTS SAYS EXACTLY HOW I FEEL. YOUR LAWS DON'T.

YOURS TRULY,



GEORGETTE M. STURE  
3380 S. SHAMROCK ST.  
WASILLA, ALASKA 99687 3/26/2004



# Alaska State Legislature

Please enter into the record my testimony to the Senate resources Committee  
committee name

committee on S 312, dated MAR 26, 04  
bill/subject

~~Self~~ Another example of slipping it by the public back home. I know of a number of folks that would like to have testified to 312 and the Property Owners Bill of Rights. They looked last night and/or today, had no idea it was being heard. I'm sure it's easier to preach to the choir. Remember Mr Myers testified Monday, is he exempt today as I am?

Signed: MYRL Thompson  
Testifier Self  
Representing (Optional) Robert 877189 Wasilla AK 99687  
Mailing Address 273-1686  
Phone Number



# Alaska State Legislature

Please enter into the record by testimony to the (S) RES  
COMMITTEE NAME  
 committee on SB 312, dated 2-23-04  
BILL / SUBJECT TODAY'S DATE

IT IS GOOD THAT THE LEGISLATURE IS INVESTIGATING WAYS TO CORRECT SOME OF THE MANY PROBLEMS ASSOCIATED WITH COMBUSTED METHANE (SHALLOW GAS) LEASING. UNFORTUNATELY, IT DOESN'T APPEAR TO RESOLVE MANY OF THE ISSUES FOR EXISTING OR PENDING LEASES. BADLY NEEDED REFORM LEGISLATION MUST PROTECT PROPERTY RIGHTS FOR ALL ALASKAN SURFACE ESTATE OWNERS, ASSURE THE QUALITY AND QUANTITY OF WATER FROM WELLS OR OTHER SOURCES, AND REINSTATE SOUND PUBLIC PROCESS. IT SHOULD ALSO ASSURE THAT A MEANINGFUL SHARE OF ANY PRODUCTION PROFITS FLOW TO THE STATE. IN MY OPINION, NONE OF THESE WILL BE POSSIBLE ABSENT A BUYBACK OF EXISTING SHALLOW GAS LEASES.

Signed: Michael S. O'Meara MICHAEL S. O'MEARA  
TESTIFIER  
SELF  
REPRESENTING  
P.O. BOX 301, HOMER, AK 99603  
ADDRESS  
907-235-8635 X 30 (WORK)  
PHONE NO.



# Alaska State Legislature

Please enter into the record by testimony to the Senate Resources  
COMMITTEE NAME

committee on SB 312, dated Feb 23, 04  
BILL / SUBJECT TODAY'S DATE

Senator Ogan and members of the Senate Resources Committee =  
 Thank you for introducing and hearing this bill. It is a good  
 first step in solving the problems brought about by shallow  
 gas-leasing.

However from the perspective of a Homer property owner  
 whose subsurface rights have been leased, both under my  
 residence on Kachemak Bay and my lot across the street, as  
 well as those of my neighbors up and down the street, it does  
 NOT go far enough. I was and continue to be extremely dis-  
 tressed when I found out from friends about the leasing and  
 am looking to you for a solution to this problem now. I urge  
 you to amend this bill to include a moratorium on existing  
 Homer leases and/or a buyback of all these leases. Stop the  
 nightmare that this leasing presents to us in Homer!

Thank you,

Signed: Anne McLeod  
TESTIFIER  
self  
REPRESENTING  
PO Box 1395 Homer 99603  
ADDRESS  
235-6919  
PHONE NO.

FEB-23-2004(MON) 16:33 WOLF ARCHITECTURE

(FAX)1 907 746 8680

P.001/003

Rx Date/Time FEB-23-2004(MON) 13:08

9073766180

P.002

FEB-23-04 MON 12:25 PM MATSU LIO

FAX NO. 9073766180

P. 02



# Alaska State Legislature

Please enter into the record my testimony to the SENATE RESOURCES  
committee name

committee on SB 312, dated 23 FEB. 04  
bill/subject

TESTIMONY ATTACHED

*originally faxed  
2/23*

Signed: CHRIS WHITTINGTON - EVANS

Testifier

self

Representing (Optional)

HCDR BOX 7019 A PALM BEACH, FL 33445

Mailing Address

907 746 7023

Phone Number

Senator Scott Ogan, Chairman  
Senate Resources Committee  
Alaska State Legislature

Mr. Chairman;

Thank you for the opportunity to provide testimony to members of the Senate Resources Committee regarding SB312.

While many concessions have been made in getting to this point, Mat-Su and Homer citizens, now contending with active coal bed methane leases and plans for their potential development, are largely unprotected by and unsatisfied with the legislation as introduced. Landowners—especially but not exclusively those above or adjacent to leases—believe that this bill unfairly disregards their rights to enjoy, use and make sound investment into their private and public property.

To these people, and others in areas for which leases have been applied, SB312 is less significant for what it does than for what it does not do. Approximately 350,000 acres, most of the populated Mat-Su, a good chunk of the southern Kenai, and areas around Red Dog are leased. Another 150,000 acres of land in the Valley, adjacent to Denali National Park, and among the wetlands around the Holitna and Hoholitna Rivers await lease approvals. The properties above active leases in the Valley and Homer areas alone are assessed in excess of 300 million dollars. The legislation before you, while alleviating some of the many problems with the existing shallow gas program—lack of public notice and input prior to leasing, best interest exemption, and competing resource conflicts—unfairly offers these revisions to all of Alaska except the half-million acres now faced with development.

Rather than diffusing citizen discontent this prejudice has added to the sense of outrage many of the 15,000 plus property owners already feel. And who can blame them.

It has been brought to my attention that Multiple Listing Service now has a 'CBM code' on listed properties touched by shallow gas leases. What devaluation affect this 'black list' might have is uncertain. However, from studies in the Durango, CO area, such codes have resulted in a 25% decline in buyer interest and up to a 30% decline in value prior to having a well placed on them or nearby.

Why should any Alaskan be forced to accept what even the framers of this program now admit were, "unintended consequences?" How can this body, in good conscience, allow such affects to jeopardize the fastest growing residential and commercial areas in the state—communities where large private and public investments are being made in support of those land uses. While SB312 recognizes the fatal flaws of the shallow gas program, it does so without working to remedy the problems it's already created.

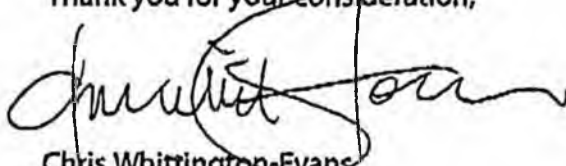
Rumors that the lessee intends to relinquish their leases at the end of their term due to their lack of viability are speculative and refuted by numerous lease offers currently being made to private subsurface owners in the same area. Absent any provision to sunset the leases after their first term, how is the public to trust the leases won't be extended and their lands won't be developed.

We live at a time and in a place where what is on the surface is worth at least as much as what lies below. Unfortunately, our lands are governed by 19th century rules that give priority to the ways and means of the subsurface mineral estate at the expense of the surface owner. No amount of mitigation can change that basic and backwards tenant.

For the purposes of this legislation, let me simply suggest that as you debate its purpose and practice, you keep in mind the thousands of Alaskans who built their homes, invested in businesses and depend upon recreational and subsistence resources for which this bill offers no remedy. Passage of SB312 is of little consequence to those, of which I am one, whose lifelong investments are now at risk.

Amend this bill so that all Alaskans are given due process and equal protection to enjoy the maximum benefits afforded by the Constitution of our state. Reacquire all the existing leases, as Senator Gary Stevens has proposed for the Southern Kenai, and then move forward appropriately exploring for and developing Alaska's shallow gas resources in a manner consistent with the public interest.

Thank you for your consideration,



Chris Whittington-Evans  
Palmer, Alaska



# Alaska State Legislature

Please enter into the record my testimony to the Senate Resources Committee  
committee name

committee on SB 312 dated \_\_\_\_\_  
bill/subject

Once again notice was woefully inadequate for members of the public to participate & voice their concerns regarding SB 312 & adopting the Property Owner's Bill of Rights.

First you will not take testimony & at the last minute you will, but with conditions. We as residents deserve adequate notice to address the legislature about any issue at anytime. You are all a disgrace for allowing this inadequate notice to happen time & time again.

I want all of you to find a way to adopt the Property Owner's Bill of Rights. Due to your lack of knowledge regarding Coal Bed Methane Development & the negative impacts, we, the residents have been put in the position of fixing it for you & educating you about CBM. This Bill of Rights will mitigate the damage your misguided, ill conceived previous legislation has done to residents. Adopt it or buy back the leases until you correct your mistakes.

I also want to add that I hope Senator Lincoln received the email containing the CBM resolutions that were adopted by the Mat-Su Borough Assembly.

Signed: Kathy Wells  
Testifier

Representing (Optional)  
PO Box 3331 Palmer, AK  
Mailing Address  
873-6114  
Phone Number

I can't believe you won't let me testify!



# Alaska State Legislature

Please enter into the record by testimony to the Senate Resources  
COMMITTEE NAME

committee on CSB 312, dated March 22, '04.  
BILL / SUBJECT TODAY'S DATE

I appreciate you taking the time to discuss the property owners Bill of Rights. I still don't hear you working to protect property owners of Homer leased acreage. Once again, I urge you to find a way to work to help those of us who daily live with the threat of shallow natural gas development on our land.

For your information, this is not just a Homer and Anchor Point residents' problem. Over 100 leased properties are owned by Anchorage residents, dozens from residents of other Alaskan cities and towns, not to mention those owned by residents from over 30 other states who had no possible way of knowing that their subsurface had been leased.

Signed: Anna Wiiland  
TESTIFIER  
Self  
REPRESENTING  
PO 1395 Homer, AK 99603  
ADDRESS  
(907) 235-6919  
PHONE NO.



# Alaska State Legislature

Please enter into the record my testimony to the John Vinduska  
committee name

committee on 312, dated 3-26-04  
bill/subject

I urge the Senate Resource Committee to adopt the Property Owners bill of rights. It is the only way most people affected by CBM development can feel protected. I was present when Jack Chenoweth gave his testimony and it seem to me that he felt the bill was completely doable. I urge all members to learn all there is to CBM not just from industry then put yourself in our position. We don't want to pay for the unintended consequences made by our representatives.

Signed: John Vinduska  
Testifier SELF  
Representing (Optional) HCO4 9153 Palmer  
Mailing Address 745-4054  
Phone Number

Roberta Highland  
P.O. Box 2460  
Homer, AK 99603

3-26-04  
907-235-8214

Dear Senate Resource Com.:

I would like to request public testimony be taken during the 3<sup>30</sup> pm teleconference hearing the Property Bill of Rights.

Thank you.

Sincerely,

Roberta Highland

P.S. we did not know this was going to be heard, so I did not sign up for testimony on Monday.

faxed 3/26/04 APC

P.O. Box 2994  
Homer, AK 99603  
March 26, 2004

Senate Resources Committee  
Alaska Legislature  
Juneau AK 99801

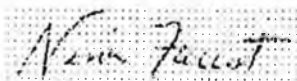
Dear Senate Resource Committee Members:

I understand the committee will be discussing the Alaskan Property Owners Bill of Rights at the Committee Hearing today at 3:30 pm. I know that some testimony from the public was taken on Monday, but many of us not in Juneau did not have an opportunity to present our views then. I would appreciate an opportunity to give testimony at today's hearing and would hope that the committee would allow other members of the public to testify.

One concern I would like to see addressed is that the Property Owners Bill of Rights should all in one place in legislation. To scatter the 10 points out over the various bills is confusing to the public and makes it difficult to find new property owner protections that have been enacted.

One final request, if public testimony is allowed, I would appreciate being able to call in from home as I am unable to get down to the LIO today. Thank you.

Sincerely,



Nina Faust



# Alaska State Legislature

Please enter into the record by testimony to the (S) RES  
COMMITTEE NAME  
 committee on SB 312, dated 2-23-04  
BILL / SUBJECT TODAY'S DATE

IT IS GOOD THAT THE LEGISLATURE IS INVESTIGATING WAYS TO CORRECT SOME OF THE MANY PROBLEMS ASSOCIATED WITH COALBED METHANE (SHALLOW GAS) LEASING. UNFORTUNATELY, IT DOESN'T APPEAR TO RESOLVE MANY OF THE ISSUES FOR EXISTING OR PENDING LEASES. BADLY NEEDED REFORM LEGISLATION MUST PROTECT PROPERTY RIGHTS FOR ALL ALASKAN SURFACE ESTATE OWNERS, ASSURE THE QUALITY AND QUANTITY OF WATER FROM WELLS OR OTHER SOURCES, AND REINSTATE SOUND PUBLIC PROCESS. IT SHOULD ALSO ASSURE THAT A MEANINGFUL SHARE OF ANY PRODUCTION PROFITS FLOW TO THE STATE. IN MY OPINION, NONE OF THESE WILL BE POSSIBLE ABOUT A BUYBACK OF EXISTING SHALLOW GAS LEASES.

Signed: Michael S. O'Meara MICHAEL S. O'MEARA  
TESTIFIER  
SELF  
REPRESENTING  
P.O. Box 361, HOMER, AK 99603  
ADDRESS  
907-235-8635 X 30 (WORK)  
PHONE NO.

faxed 2-23-04  
 APC



# Alaska State Legislature

Please enter into the record by testimony to the Senate Resources  
COMMITTEE NAME  
 committee on SB 312, dated Feb 23, 04.  
BILL / SUBJECT TODAY'S DATE

Senator Ogan and members of the Senate Resources Committee:  
 Thank you for introducing and hearing this bill. It is a good first step in solving the problems brought about by shallow gas leasing.

However from the perspective of a Homer property owner whose subsurface rights have been leased, both under my residence on Kachemak Bay and my lot across the street, as well as those of my neighbors up and down the street, it does NOT go far enough. I was and continue to be extremely distressed when I found out from friends about the leasing and am looking to you for a solution to this problem now. I urge you to amend this bill to include a moratorium on existing Homer leases and/or a buyback of all these leases. Stop the nightmare that this leasing presents to us in Homer!

Thank you,

Signed: Anne Wieland  
TEST. NAME  
self  
REPRESENTING  
PO Box 1395 Homer 99603  
ADDRESS  
235-6919  
PHONE NO.

faxed 2-23-04  
 D APC

FEB-23-2004(MON) 16:33 WOLF ARCHITECTURE  
Rx Date/Time FEB-23-2004(MON) 13:08  
FEB-23-04 MON 12:25 PM HATSU LIO

(FAX)1 907 746 6680  
9073766180  
FAX NO. 9073766180

P.001/003  
P.002  
P. 02



# Alaska State Legislature

Please enter into the record my testimony to the SENATE RESOURCES  
committee name

committee on SB 312 dated 23 FEB. 04  
bill/subject

TESTIMONY ATTACHED

Signed: CHRIS WHITTINGTON - EVANS  
Testifier self  
Representing (Optional)  
HCOR Box 7019 A PALMSPR., AK 99645  
Mailing Address  
907 746 7023  
Phone Number

Senator Scott Ogan, Chairman  
Senate Resources Committee  
Alaska State Legislature

Mr. Chairman;

Thank you for the opportunity to provide testimony to members of the Senate Resources Committee regarding SB312.

While many concessions have been made in getting to this point, Mat-Su and Homer citizens, now contending with active coal bed methane leases and plans for their potential development, are largely unprotected by and unsatisfied with the legislation as introduced. Landowners—especially but not exclusively those above or adjacent to leases—believe that this bill unfairly disregards their rights to enjoy, use and make sound investment into their private and public property.

To these people, and others in areas for which leases have been applied, SB312 is less significant for what it does than for what it does not do. Approximately 350,000 acres, most of the populated Mat-Su, a good chunk of the southern Kenai, and areas around Red Dog are leased. Another 150,000 acres of land in the Valley, adjacent to Denali National Park, and among the wetlands around the Hollitna and Hoholitna Rivers await lease approvals. The properties above active leases in the Valley and Homer areas alone are assessed in excess of 300 million dollars. The legislation before you, while alleviating some of the many problems with the existing shallow gas program—lack of public notice and input prior to leasing, best interest exemption, and competing resource conflicts—unfairly offers these revisions to all of Alaska except the half-million acres now faced with development.

Rather than diffusing citizen discontent this prejudice has added to the sense of outrage many of the 15,000 plus property owners already feel. And who can blame them.

It has been brought to my attention that Multiple Listing Service now has a 'CBM code' on listed properties touched by shallow gas leases. What devaluation affect this 'black list' might have is uncertain. However, from studies in the Durango, CO area, such codes have resulted in a 25% decline in buyer interest and up to a 30% decline in value prior to having a well placed on them or nearby.

Why should any Alaskan be forced to accept what even the framers of this program now admit were, "unintended consequences?" How can this body, in good conscience, allow such affects to jeopardize the fastest growing residential and commercial areas in the state—communities where large private and public investments are being made in support of those land uses. While SB312 recognizes the fatal flaws of the shallow gas program, it does so without working to remedy the problems it's already created.

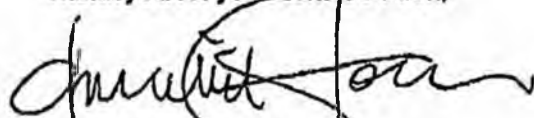
Rumors that the lessee intends to relinquish their leases at the end of their term due to their lack of viability are speculative and refuted by numerous lease offers currently being made to private subsurface owners in the same area. Absent any provision to sunset the leases after their first term, how is the public to trust the leases won't be extended and their lands won't be developed.

We live at a time and in a place where what is on the surface is worth at least as much as what lies below. Unfortunately, our lands are governed by 19th century rules that give priority to the ways and means of the subsurface mineral estate at the expense of the surface owner. No amount of mitigation can change that basic and backwards tenant.

For the purposes of this legislation, let me simply suggest that as you debate its purpose and practice, you keep in mind the thousands of Alaskans who built their homes, invested in businesses and depend upon recreational and subsistence resources for which this bill offers no remedy. Passage of SB312 is of little consequence to those, of which I am one, whose lifelong investments are now at risk.

Amend this bill so that all Alaskans are given due process and equal protection to enjoy the maximum benefits afforded by the Constitution of our state. Reacquire all the existing leases, as Senator Gary Stevens has proposed for the Southern Kenai, and then move forward appropriately exploring for and developing Alaska's shallow gas resources in a manner consistent with the public interest.

Thank you for your consideration,



Chris Whittington-Evans  
Palmer, Alaska



# Alaska State Legislature

Please enter into the record my testimony to the Senate Resources Committee  
committee name

committee on SB 312, dated \_\_\_\_\_  
bill/subject

Once again notice was woefully inadequate for members of the public to participate & voice their concerns regarding SB 312 & adopting the Property Owner's Bill of Rights.

First you will not take testimony & at the last minute you will, but with conditions. We as residents deserve adequate notice to address the legislature about any issue at any time. You are all a disgrace for allowing this inadequate notice to happen time & time again.

I want all of you to find a way to adopt the Property Owner's Bill of Rights. Due to your lack of knowledge regarding Coal Bed Methane Development & the negative impacts, we, the residents have been put in the position of fixing it for you & educating you about CBM. This Bill of Rights will mitigate the damage your misguided, ill conceived previous legislation has done to residents. Adopt it or buy back the leases until you correct your mistakes.

I also want to add that I hope Senator Lincoln received the email containing the CBM resolutions that were adopted by the Mat-Su Borough Assembly.

Signed: Kathy Wells  
Testifier

Representing (Optional)  
PO Box 3331 Palmer, AK  
Mailing Address  
373-1414  
Phone Number

I can't believe you won't let me testify!



# Alaska State Legislature

Please enter into the record by testimony to the Senate Resources

COMMITTEE NAME

committee on CSSB 312, dated March 22, '04

BILL / SUBJECT

TODAY'S DATE

I appreciate you taking the time to discuss the property owners Bill of Rights. I still don't hear you working to protect property owners of Homer leased acreage. Once again, I urge you to find a way to work to help those of us who daily live with the threat of shallow natural gas development on our land.

For your information, this is not just a Homer and Anchor Point residents' problem. Over 100 leased properties are owned by Anchorage residents, dozens from residents of other Alaska cities and towns, not to mention those owned by residents from over 30 other states who had no possible way of knowing that their subsurface had been leased.

Signed: Anne Wieland Anne Wieland

TESTIFIER

self

REPRESENTING

PO 1395 Homer, AK 99603

ADDRESS

(907)235-6919

PHONE NO.

faxed 3/22/04 4:35pm



# Alaska State Legislature

Please enter into the record my testimony to the John Vinduska  
committee name

committee on 312, dated 3-26-04  
bill/subject

I urge the Senate Resource Committee to adopt the Property Owners bill of rights. It is the only way most people affected by CBM development can feel protected. I was present when Jack Phenow gave his testimony and it seem to me that he felt the bill was completely doable. I urge all members to learn all there is to CBM not just from industry then put yourself in our position. We don't want to pay for the unintended consequences made by our representatives.

Signed: John Vinduska  
Testifier

SELF  
Representing (Optional)  
HCO4 9153 Palmer

Mailing Address  
745-4054

Phone Number

Roberta Highland  
P.O. Box 2460  
Homer, AK 99603

3-26-04  
907-235-8214

Dear Senate Resource Comm.:

I would like to request public testimony be taken during the 3<sup>30</sup> pm teleconference hearing the Property Bill of Rights.

Thank you.

Sincerely,

Roberta Highland

P.O. Box 2994  
Homer, AK 99603  
March 26, 2004

Senate Resources Committee  
Alaska Legislature  
Juneau AK 99801

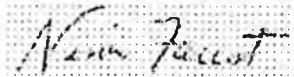
Dear Senate Resource Committee Members:

I understand the committee will be discussing the Alaskan Property Owners Bill of Rights at the Committee Hearing today at 3:30 pm. I know that some testimony from the public was taken on Monday, but many of us not in Juneau did not have an opportunity to present our views then. I would appreciate an opportunity to give testimony at today's hearing and would hope that the committee would allow other members of the public to testify.

One concern I would like to see addressed is that the Property Owners Bill of Rights should all in one place in legislation. To scatter the 10 points out over the various bills is confusing to the public and makes it difficult to find new property owner protections that have been enacted.

One final request, if public testimony is allowed, I would appreciate being able to call in from home as I am unable to get down to the LIO today. Thank you.

Sincerely,



Nina Faust

**SB**

**318**

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/11/04

FURTHER: Judiciary

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4-8-04

Resources Committee considered      SENATE BILL NO. 318

### SB 318 CONSUMPTIVE USE OF FISH AND GAME

"An Act relating to the individual right of Alaska residents in the consumptive use of fish and game."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 318 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
F+G	2/2/04			✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>				✓
<i>[Signature]</i>		✓	✓	
<i>[Signature]</i>		✓		
<i>[Signature]</i> Ben Stevens	✓			
CHAIR: <i>[Signature]</i>	✓			

*Scott Ogan is the chairman + he votes do pass!*

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: S.B. 318  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title Consumptive Use of Fish and Game RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Senator Seekins Component No. \_\_\_\_\_  
 Requester Senate Resources \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson, Legislative Liaison Phone 465-6137  
 Division: Alaska Department of Fish & Game Date/Time 2/27/04 4:36 PM  
 Approved by: Commissioner Kevin Duffy Date 2/27/2004  
 Agency: Alaska Department of Fish & Game



**SENATOR SCOTT OGAN**

23<sup>RD</sup> Alaska State Legislature

Senate District H Lazy Mountain \* Butte \* Chugiak \* Peters Creek \* Fairview Loop

Knik-Goose Bay \* Big Lake \* Houston \* Willow \* Talkeetna \* Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 \* (907) 465-3878 \* 1 (800) 862-3878 \* Fax (907) 465-3265

Senator\_Scott\_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: leg legal FROM: Linda Hay - Sen. Res.  
 COMPANY: DATE: 4-8-04  
 FAX NUMBER: TOTAL NO. OF PAGES INCLUDING COVER: 2  
 PHONE NUMBER: RE: CS for SB 318

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

Please prepare a Senate Resources  
 Committee CS for SB 318  
 Amendment + title change  
 language is attached.

Call if there are questions

Linda Hay  
 #4907

— moved by Ogan  
— objection  
— amend adopted  
44 2N

23-LS1675\Q.1  
Utermohle  
4/7/04

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSSB 318( ), Draft Version "Q"

- 1 Page 1, line 1:
- 2 Delete "the right of Alaska residents in"
- 3 Insert "a preference for"
- 4
- 5 Page 1, line 7:
- 6 Delete "important and fundamental right"
- 7 Insert "high preference"

Lincoln N  
Dyson Y  
Wag Y  
Elton N  
Seekins Y  
Ogan Y

*needs to adopt CS*  
Adopted on 3/24/04

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1675\Q  
Utermohle  
3/22/04

CS FOR SENATE BILL NO. 318( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS SEEKINS, Green, Cowdery

*inalienable  
fundamental  
high preference*

A BILL

FOR AN ACT ENTITLED

*Title Change*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

"An Act relating to *(the right of Alaska residents in)* the consumptive uses of fish and game." *( a preference for )*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.005. Policy. It is the policy of the state that the consumptive uses of wild fish and game resources by Alaska residents for their sustenance is a very *(important and fundamental right)* when considering the management and allocation of those resources. Nothing in this policy exempts a person from compliance with state law. In this section, "sustenance" means that which is used for personal and family consumption as food or nourishment, or to sustain life.

*high preference*

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## MEMORANDUM

Date: March 23, 2004

To: Office of Senator Ogan

*AS for R.S.*

From: Senator Ralph Seekins

Re: Senate Bill 318 version "Q" replacing version "D"

---

The Committee Substitute for Senate Bill 318, denoted as version "Q", makes a number of minor revisions to the bill detailed as follows: (1) changes the word "use" to "uses" in line five; (2) removes the word "individual" from lines six and seven; (3) adds the phrase "...for their sustenance..." to line six; (4) adds the two new sentences starting on line eight and continuing to line ten.

The bill, with added language bolded/underlined and deleted language bracketed, now reads:

5                   Sec. 16.05.005. Policy. It is the policy of the state that the consumptive [use] uses  
6 of wild fish and game resources by [individual] Alaska residents for their sustenance is a very  
7 important and fundamental [individual] right when considering the management and allocation of  
8 those resources. Nothing in this policy exempts a person from compliance with state  
9 law. In this section, "sustenance" means that which is used for personal and family  
10 consumption as food or nourishment, or to sustain life.

23-LS1675\Q  
Utermohle  
3/22/04

CS FOR SENATE BILL NO. 318( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS SEEKINS, Green, Cowdery

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the right of Alaska residents in the consumptive uses of fish and  
2 game."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 16.05 is amended by adding a new section to read:

5       Sec. 16.05.005. Policy. It is the policy of the state that the consumptive uses  
6 of wild fish and game resources by Alaska residents for their sustenance is a very  
7 important and fundamental right when considering the management and allocation of  
8 those resources. Nothing in this policy exempts a person from compliance with state  
9 law. In this section, "sustenance" means that which is used for personal and family  
10 consumption as food or nourishment, or to sustain life.

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## MEMORANDUM

Date: March 19, 2004

To: Office of Senator Ogan

From: Senator Ralph Seekins

*A for R.S.*

Re: Senate Bill 318 version "I" replacing version "D"

---

The Committee Substitute for Senate Bill 318, denoted as version "I", makes a number of small revisions to the bill detailed as follows: (1) changes the word "use" to "uses" in line five; (2) removes the word "individual" from lines six and seven; (3) adds the phrase "...for their sustenance..." to line six, and; (4) adds the sentence starting with "Nothing..." in line eight and continuing on line nine.

The bill, with added language bolded/underlined and deleted language bracketed, now reads:

5                   Sec. 16.05.005. Policy. It is the policy of the state that the consumptive [use] uses  
6   of wild fish and game resources by [individual] Alaska residents for their sustenance is a very  
7   important and fundamental [individual] right when considering the management and allocation of  
8   those resources. Nothing in this policy exempts a person from compliance with state  
9   law.

23-LS1675M  
Utermohle  
3/19/04

**CS FOR SENATE BILL NO. 318( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS SEEKINS, Green, Cowdery**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the right of Alaska residents in the consumptive uses of fish and**  
2 **game."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1. AS 16.05 is amended by adding a new section to read:**

5 **Sec. 16.05.005. Policy.** It is the policy of the state that the consumptive uses  
6 of wild fish and game resources by Alaska residents for their sustenance is a very  
7 important and fundamental right when considering the management and allocation of  
8 those resources. Nothing in this policy exempts a person from compliance with state  
9 law.

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

Senator Ralph Seekins  
District D

## MEMORANDUM

Date: March 11, 2004

To: Office of Senator Ogan

From: Senator Ralph Seekins

Re: Senate Bill 318 version "H"

*Ag for R.S.*

---

The Committee Substitute for Senate Bill 318, denoted as version "H", adds three words to line six of the bill. The bill, with added language bolded and underlined, now reads:

5           Sec. 1605.005. Policy. It is the policy of the state that the consumptive use of  
6 wild fish and game resources by individual Alaska residents **for their sustenance** is a  
7 very important and fundamental individual right when considering the management  
8 and allocation of those resources.

23-LS1675\H  
Utermohle  
3/4/04

**CS FOR SENATE BILL NO. 318( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATORS SEEKINS, Green, Cowdery**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the individual right of Alaska residents in the consumptive use of**  
2 **fish and game."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 16.05 is amended by adding a new section to read:

5 **Sec. 16.05.005. Policy.** It is the policy of the state that the consumptive use of  
6 wild fish and game resources by individual Alaska residents for their sustenance is a  
7 very important and fundamental individual right when considering the management  
8 and allocation of those resources.

# ALASKA STATE SENATE



Session:  
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Juneau, Alaska 99801-1182  
(907) 455-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## MEMORANDUM

Date: February 18, 2004  
To: Office of Senator Ogan  
From: Senator Ralph Seekins  
Re: Request for Hearing of SB 318

*30 for R.S.*

---

Attached please find Senate Bill 318. A Sponsor Statement <sup>*is attached.*</sup> ~~will follow shortly.~~

Senate Bill 318 prefaces the Fish and Game statutes with clarifying language regarding the use of consumptive use of the state's fish and game resources.

I respectfully request a hearing before your committee on this Bill at your earliest convenience. May I suggest, if possible, a hearing date coinciding with the hearing of SB 298. Thank you.

# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax



Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## Senate Bill 318 Sponsor Statement

**“An Act relating to the individual right of Alaska residents in the consumptive use of fish and game.”**

Article VIII, Section 3 of the Alaska Constitution provides that, “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.”

Article VIII, Section 4 of the Alaska Constitution provides that, “Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.”

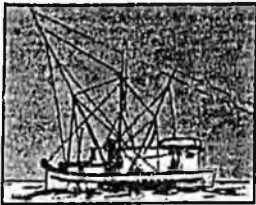
The qualifying phrase “subject to preferences among beneficial uses” signals recognition by the constitutional delegates that not all the demands made upon resources can be satisfied, and that prudent resource management based on modern conservation principles necessarily involves prioritizing competing uses.

Alaska’s natural resources are “public trust” assets. They are held by the state in trust for the benefit of all its people. In Alaska, the Legislature serves as the “Trustee” of these assets. As such, it has delegated some of its trust powers and duties to the Board of Fish, the Board of Game and the Department of Fish and Game.

Senate Bill 318 gives direction from the Trustees (the Legislature) to the Boards and the Department that, when making decisions regarding the management and/or allocation of these commonly owned resources, they should recognize that the consumptive use of wild fish and game resources by Alaskans to feed themselves and their families is a very important and fundamental individual right.

*from Lee Stevens*

**It is the policy of the state that the consumptive use of wild fish and game resources by individual Alaska residents for their sustenance is a very important and fundamental individual right when considering the management and allocation of those resources.**



# Alaska Trollers Association

130 Seward St., No. 211  
Juneau, Alaska 99801  
(907) 586-9400  
(907) 586-4473 Fax

April 7, 2004

Senator Scott Ogan, Chairman  
Senate Resources Committee  
Alaska State Legislature  
Juneau, AK 99811

Dear Senator Ogan:

The Alaska Trollers Association strongly opposes SB 318.

It is ATA's belief, and the opinion of many knowledgeable state attorneys and employees, that this bill has the potential to drastically alter the way Alaska manages its resources. Both the Board of Fisheries and the Commissioner of Fish and Game could be hamstrung in their ability to balance the needs of Alaska residents who rely on fish and game for sustenance and their livelihood.

The strength of our resource management program lies in the ability of Boards of Fisheries and Game to allocate amongst user groups based on solid biological information and public comment regarding the impact of proposed regulations. In addition, the Board utilizes allocation criteria that have stood the test of time and court challenge. The Board may allocate more, or less, to specific users and purposes, as this bill attempts to do. Further, the Commissioner makes many decisions inseason and often modifies regulations through emergency order, in order to ensure the Board's goals. Unfortunately, if SB 318 were to pass, it is likely the courts would be the forum where allocative decisions would be made. This is not in the best interest of Alaskans or our state government.

The Southeast troll fleet is 85% resident - about 40% of our permit holders reside in rural communities. Nearly one in 30 people in this region work on a troll boat and many small communities and businesses benefit from our fleets presence. SB 318 puts at risk the fishermen I represent, as well as numerous other fishing operations and businesses in the Southeast region and around the state.

Even Alaska consumers could feel the pinch of this bill. Say, a resident that enjoys eating Alaska fish, but prefers not to catch it. What about them?

Our Constitution provides for utilization of the public resource to the benefit of ALL its citizens. We urge you not to compromise this noble mandate. Please, vote no on SB 318.

Thank you for your consideration of ATA's point of view. Please contact me if I can be of help.

Best regards,

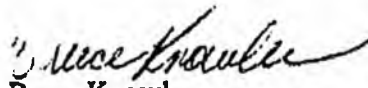
Executive Director

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

From: Bruce Knowles  
6490 Ptarmigan Circle  
Wasilla, Alaska 99654

Dear Senator Organ;

This fax is to inform you that I will have a letter of support for S.B 318 sent off to you tomorrow from the Cook Inlet Spot Fish Caucus. The Cook Inlet Sports Fish Caucus believes that the highest and best use of our fish and game resources is on the dinner plates of Alaskans.



Bruce Knowles  
907-373-4965  
akbigfish@pci.net



**FAX TRANSMISSION**

**OFFICE OF THE ATTORNEY GENERAL  
NATURAL RESOURCES SECTION--ANCHORAGE**

1031 W. 4TH AVE., SUITE 200  
ANCHORAGE, ALASKA 99501  
(907) 269-5232, 269-5234, 269-5251  
Fax: (907) 278-4607, 279-2834

TO: Sen. Scott Ogan FAX # (907) 465-3265  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

FROM: AAG Lance Nelson DATE: 3-29-04  
 PAGES: 6, including cover SUBJECT: SB 318  
Comments

Urgent  For Review  Please Comment  Please Reply

• COMMENTS: As requested by Senate Resources Committee.

IF YOU DO NOT RECEIVE ALL THE PAGES OR HAVE ANY PROBLEMS, PLEASE CALL \_\_\_\_\_ AT (907) \_\_\_\_\_.

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**COMMENTS ON SENATE BILL NO. 318****Senate Resources Committee****AAG Lance Nelson, March 29, 2004****I. Introduction.**

First of all Mr. Chairman I apologize for not being present at the conclusion of the last hearing on this bill. I regret if my absence and failure to give testimony unduly delayed the committee's consideration of this bill. I would like to raise three issues for your consideration on SB 318. First, is it the proper role of the legislature to classify the status of rights as "fundamental." Second, whether consumptive uses of fish and wildlife for sustenance may properly be considered a "fundamental" right. And finally, what will be the likely impact from those uses being deemed a "fundamental" right.

**II. Discussion.****A. Legislative Authority Question**

The intention of the bill is to establish consumptive uses of fish and game by Alaska residents for their sustenance as a very important and fundamental right. Most Alaskans may likely agree with that policy; hunting and fishing for food in Alaska is like motherhood and apple pie to most of us. However, a possible problem is that terms like "important right" and "fundamental right" are legal terms of art that have may or may not have legal consequences. It appears that a possible goal of the bill is to have these uses be considered fundamental rights under the state constitution.

If the goal of the bill is to establish constitutional rights, it's not clear that the legislature has the ability to do this by statute, without seeking an amendment of the constitution itself. The legislature implements the constitution and acts as authorized by the constitution, but can't change the constitution by statute. I don't know of any precedent for legislative establishment of a right as being constitutionally "fundamental."

Further, the main impact of effective establishment of a "fundamental" right occurs in the judicial process. When the government regulates a "fundamental" right, as opposed to a lower-status right, it is held, by the courts, to a much higher standard for justification of any restriction on "fundamental" rights. Historically, the courts have been the only branch of government that have found rights to be constitutionally "fundamental," and have applied appropriate judicial standards. It is unclear what the impact of a legislative declaration of a fundamental right would be.

One possible reason for this is that court rulings interpreting the constitution are governed by rules of stare decisis, the rule of following precedent. Previous legal rulings are not lightly overturned. The legislature, on the other hand, may amend or repeal

statutes as it sees fit, with almost unlimited discretion. It would seem that if a right is truly "fundamental," its status should not be easily reclassified. If a right is truly "fundamental," can it be repealed the next legislative session? There is no legal impediment to that kind of reversal in the legislative rules. So this raises the question whether the courts will be required to adopt, or even consider, the legislative declaration?

If the goal of the legislature is not to establish a constitutional right, but only a statutory one, then that raises the issue of what the legal impact of SB 318 would be. The legislature has broad authority to establish a clear preference among consumptive uses and nonconsumptive uses of fish and wildlife. The legislature has already gone a long way to protect consumptive uses for food by creating and directing a statutory preference for subsistence uses of fish and wildlife. There are many other existing statutes that would appear to be in tension with the bill, in that they authorize the Boards of Fisheries and Game and the Department of Fish and game to manage and regulate without necessarily paying special deference to all of the uses identified in SB 318. Without more direction, it would appear that this bill may create controversy and unnecessarily encourage litigation.

**B. Are consumptive uses of fish and game for sustenance really "fundamental" rights?**

Consumptive uses of fish and wildlife for food and sustenance have, so far, not been considered fundamental rights by our state supreme court.

The courts have generally ruled that, with very limited exceptions, only rights enumerated in the constitution are fundamental rights. The right to hunt and fish for food is not expressed in the constitution. Recently, the Alaska Supreme Court catalogued its decisions on fundamental rights, and explained the standards for identifying such rights. *Sampson v. State*, 31 P.3d 88 (Alaska 2001). The Court listed only four fundamental rights not explicit in the Alaska Constitution that have been identified to date, none of which are related to use of natural resources. *Id.* at 92. Those were (1) the right to reproductive privacy, (2) the right to control personal appearance, (3) the right to privacy within the home, and (4) the right of self-representation in a post-conviction hearing. *Id.* All of these cases involve personal autonomy to control our appearance or to direct the course of our lives. They do not involve the use of natural resources. *Id.* at 94. The opinion clarifies that other fundamental rights might be recognized, stating:

[W]e are under a duty ... to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of [Alaska's] constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage.

*Id.* at 92. The consumptive use of fish and game, while extremely important to Alaskans, may not meet this test. Hunting and fishing for food is, while important culturally and in other ways (as is commercial fishing, trapping, and sport fishing), at its most basic level, an economic endeavor. See *Alaska Survival v. State, Dep't of Natural Resources*, 723 P.2d 1281 at 1292 (Alaska 1986) (where the Court recognized that litigants raising subsistence concerns are addressing economic concerns, although not the type of economic concerns which would preclude public interest litigant status). Nevertheless, economic endeavors of this type are not accorded fundamental right status by the courts. *Commercial Fisheries Entry Commission v. Apokedak* 606 P.2d 1255, 1262-63 (Alaska 1980).

The Alaska Supreme Court has to date not recognized any fundamental right to use Alaska's natural resources. Instead, current authority is to the contrary. Thus, in the *Apokedak* case, the Court stated that the right to fish commercially, for example, is not a fundamental right. *Accord., Gilbert v. State*, 803 P.2d 391, 400 n.11 (Alaska 1990) and *Deubeleiss, supra*, 689 P.2d 489 n. 3 (the right to a limited entry permit does not implicate a fundamental right). In *Herscher v. State*, the Court said that "[t]he State's power over natural resources is such that it could entirely eliminate the role of hunting guides, and no problem of due process would arise." 568 P.2d 996 at 1003 (Alaska 1977). Assuming the power to eliminate other uses is coequal, this case implies that uses of natural resources do not rise to the level of fundamental rights.

In the *McDowell* case, the appellants argued at great length that the right to subsistence hunt and fish was a fundamental right. *McDowell v. State*, S-2732, Reply Brief of Appellants, pp. 12-22. Nevertheless, in the *McDowell* opinion, the Court carefully avoided using "fundamental rights" language or the fundamental rights strict scrutiny standard. Instead, the Court continued to refer to the natural resource access right in question as a "highly important interest running to each person within the state." 785 P.2d at 10, quoting *Owsichek v. State*, 763 P.2d 488, 492 n. 10 (Alaska 1983) and *State v. Ostrosky*, 667 P.2d 1189, 1196 (Alaska 1983). A "highly important interest" is not the same as a fundamental right.

Moreover, the Court developed a new, less-than-strict scrutiny but, nevertheless, heightened standard to be applied in such instances: the demanding scrutiny standard. Under *McDowell*, while subsistence hunting and fishing implicate highly important individual interests, they do not rise to the level of fundamental rights. Moreover, the interest identified was an interest in equal access, not an absolute, enforceable individual right to hunt or fish for food. Alaska Const., Art. VIII, §§ 3 and 17, and *McDowell, supra*. It can be argued that the court declined to classify subsistence hunting and fishing as a fundamental right.

While access to Alaska's natural resources was, undoubtedly, of paramount concern to the framers of our constitution and remains so, it is also equally clear that the framers intended such activities as hunting and fishing to be extensively regulated. For example, Article VIII, § 17 expressly refers to "regulations" governing the use or disposal of natural resources. Virtually every other section in Article VIII is expressly or implicitly based on the underlying premise that the Legislature will heavily regulate the use and disposal of natural resources. Yet, fundamental rights, such as the right to privacy, may be burdened by legislative fiat only to serve a compelling state interest. *Gray v. State*, 525 P.2d 524, 527-28 (Alaska 1974). Requiring a compelling state interest for regulating hunting and fishing seasons, bag limits, means and methods, and the myriad of other activities routinely regulated by the Board of Game or Board of Fisheries may not be within the intent of Article VIII's provisions.

**C. Assuming the legislature may establish constitutionally fundamental rights, what would be the impact of a fundamental right to fish and hunt for food?**

The current legal standards for hunting and fishing regulations are well settled. In the case of non-uniform classifications, the state must demonstrate an important legitimate state purpose that balances against the "highly important interest running to each person within the state," and a means to further the state's purpose carefully designed for the "least possible infringement on article VIII's open access values." *Gilbert v. State, Dep't of Fish and Game*, 803 P.2d 391, 399 (Alaska 1990). And for other fish and game regulations, the state need only show any legitimate interest and a close and substantial relationship between its interest and the chosen means of advancing that interest. *Sampson*, at 91. Rather than these relatively clear-cut standards, if fishing and hunting for food are classified as a "fundamental" right, then the standards for a valid restriction will likely get much more difficult to achieve, as I've already noted.

The courts would impose "strict scrutiny" of any regulation of fundamental rights. This is the same standard applied to justify unequal treatment based on race and gender. When the state imposes restrictions on fundamental rights, it would be required to demonstrate (1) a compelling governmental interest, not just a legitimate or important interest, and (2) the absence of a less restrictive means to advance that interest. *Sampson v. State*, 31 P.3d 88, 91 (Alaska 2001). Since we have never had a court require a "compelling" state interest for fish and game regulations, we're not sure what we would have to show to meet that standard, but it may well be that only serious conservation reasons like sustained yield concerns would meet the test. Moreover, many of the current regulations may not pass muster. To cite just a few examples:

1. Fair chase hunting measures of any kind: These could be insufficient as a compelling state governmental interest.

2. Same-day airborne hunting bans could be questionable where other less restrictive measures might address any conservation concerns.
3. Any kind of methods and means restrictions such as hunting from or with airplanes, helicopters, boats, snowmachines, or other vehicles may be difficult to justify.
4. Any kind of gear restriction, type of weapon or fishing gear, could be suspect.
5. Any kind of bag or season limits based on needs to meet the current or historical allocations to other non-preferred users could be deficient, since those uses would not be fundamental rights. So as the hunting or fishing for food by residents expanded, commercial fishing, commercial trapping, charter fishing by non-residents would automatically give way, regardless of the perceived relative values of the uses.

There are probably many other regulatory restrictions that would be vulnerable to a challenge under the fundamental rights/strict scrutiny standard.

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Subject: [Fwd: SB 318]  
Date: Mon, 08 Mar 2004 10:29:56 -0900  
From: Sarah Gilbertson <sarah\_gilbertson@fishgame.state.ak.us>  
To: Linda Hay <Linda\_Hay@Legis.state.ak.us>, brian\_hove <brian\_hove@legis.state.ak.us>

Linda & Brian,

As promised, please find attached Deputy Commissioner Regelin's testimony on S.B. 318 delivered on Monday, March 1 before the Senate Resources Committee.

Please let me know if you have any questions or need anything further.


With best regards,

Sarah A. Gilbertson  
Legislative Liaison/Special Assistant  
Office of the Commissioner  
Alaska Department of Fish & Game  
Phone: (907) 465-6137  
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----- Original Message -----

Subject: SB 318  
Date: Mon, 08 Mar 2004 10:21:30 -0900  
From: Wayne Regelin <wayne\_regelin@fishgame.state.ak.us>  
To: Sarah A Gilbertson <sarah\_gilbertson@fishgame.state.ak.us>

my comments on SB 318 are attached, please forward to the people that requested them.

 SB 318.doc	Name: SB 318.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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## SB 318

Comments by Wayne Regelin on SB 318, March 1, 2004

The Administration and the Alaska Department of Fish and Game strongly support the long-term continuation of hunting and fishing in Alaska and elsewhere in the United States. Many people in the department work to promote hunting and recreational fishing in Alaska on a daily basis.

A few years ago many state legislatures considered legislation or constitutional amendments that affirmed that hunting and fishing was an important and legitimate use of their wildlife resources. They did this in response to attacks on hunting by various anti-hunting groups. At that time the Alaska legislature considered a constitutional amendment on this subject, but did not pass any legislation.

Only a few states did pass legislation and they were very careful in how they worded their law. Hunting is a regulated activity that requires a license in every state. If the law says it is a fundamental right, it could have ramifications on a states ability to regulate hunting and fishing activities and to require hunting or fishing licenses. It could also affect trespass laws.

If an activity is a fundamental right a state agency must meet a higher standard in order to regulate that activity.

Making consumptive use of fish and wildlife by individual Alaskans a fundamental right could have a significant impact on the ability of the Board of Fish to make allocations between commercial fishermen and others. This language appears to give sport fishing a priority over commercial fishing.

The Administration has concerns about making hunting and fishing a fundamental right. Current statutes already make consumptive use of wildlife a high priority. That said, if you wish, we will be happy to work with the bill's sponsor and the Department of Law to prepare language for the committee to consider.

**Fund in court.** As used in the rule providing for allowance of costs out of a "fund in court," this is a term of art and is applied where the plaintiffs' actions have created, preserved or increased property to the benefit of a class of which the plaintiff is not a member. *Sarner v. Sarner*, 38 N.J. 463, 185 A.2d 851, 853.

**Funding system.** The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt. See *Sinking fund*, below.

**General fund.** This phrase, in many states, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. Such are distinguished from assets of a special character, such as the school fund. See also *General fund*.

**General revenue fund.** As used in connection with municipal finances, term refers to the fund out of which the usual, ordinary, running, and incidental expenses of a municipality are paid.

**No funds.** This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

**Public funds.** An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2) the bonds, stocks, or other securities of a national or state government. Money, warrants, or bonds, or other paper having a money value, and belonging to the state, or to any county, city, incorporated town or school district. The term applies to funds of every political subdivision of state wherein taxes are levied for public purposes. *Aetna Casualty & Surety Co. v. Bramwell*, D.C.Or., 12 F.2d 307, 309.

**Revolving fund.** Usually, a renewable credit over a defined period. In simple parlance it relates usually to a situation where a banker or merchant extends credit for a certain amount which can be paid off from time to time and then credit is again given not to exceed the same amount. It may also mean a fund, which, when reduced, is replenished by new funds from specified sources. Term may refer to a revolving charge account.

**Sinking fund.** The aggregate of sums of money (as those arising from particular taxes or sources of revenue) set apart and invested, usually at fixed intervals, for the extinguishment of the debt of a government or corporation, by the accumulation of interest. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. A fund created for extinguishing or paying a funded debt.

**Sinking fund tax.** A tax raised to be applied to the payment of interest on, and principal of public loan.

**Fundamental error.** See *Error*; *Plain error* rule.

**Fundamental fairness doctrine.** Due process of law as applied to judicial procedure. See *Due process of law*.

**Fundamental law.** The law which determines the constitution of government in a nation or state, and prescribes and regulates the manner of its exercise. The organic law of a nation or state; its constitution.

**Fundamental rights.** Those rights which have their source, and are explicitly or implicitly guaranteed, in the federal Constitution, *Price v. Cohen*, C.A.Pa., 715 F.2d 87, 93, and state constitutions, *Sidle v. Majors*, 264 Ind. 206, 341 N.E.2d 763. See e.g., *Bill of rights*.

Challenged legislation that significantly burdens a "fundamental right" (examples include First Amendment rights, (privacy, and the right to travel interstate)) will be reviewed under a stricter standard of review. A law will be held violative of the due process clause if it is not closely tailored to promote a compelling or overriding interest of government. A similar principle applies under Equal Protection law.

**Fundamus** /fʌndəjməs/. We found. One of the words by which a corporation may be created in England. 1 Bl.Comm. 473.

**Fundatio** /fʌndəjsh(i)ow/. Lat. A founding or foundation. Particularly applied to the creation and endowment of corporations. As applied to eleemosynary corporations such as colleges and hospitals, it is said that "fundatio incipiens" is the incorporation or grant of corporate powers, while "fundatio perficiens" is the endowment or grant or gift of funds or revenues. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629. See also *Foundation*.

**Fundator** /fʌndəjətər/. A founder (*q.v.*).

**Funded.** Said of a pension plan or other obligation when funds have been set aside for meeting the obligation when it becomes due. See also *Fund* (*Funded debt*).

**Funded pension plan.** One containing sufficient funds as contributed by a corporation to meet current and future retirement benefit obligations. The Employee Retirement Income Security Act (ERISA) regulates funding of pension plans.

**Funding.** Process of financing capital expenditures by issuing long term debt obligations or by converting short term obligations into long term obligations to finance current expenses. Allocation of money to investments or other type of reserve fund to meet future expenses for pension, welfare, or other benefits. ERISA specifies the requirements for funding of qualified retirement plans. See also *Fund*; *Funded*.

**Fundi patrimoniales** /fʌndəj pætrəmənijeyli:zi/. Lands of inheritance.

**Fundi publici** /fʌndəj pəbləsəj/. Public lands.

**Fundus** /fʌndəs/. In the civil and old English law, land; land or ground generally; land, without considering its specific use; land, including buildings generally; a farm.

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**Response to Senate Resources Committee Questions Regarding Senate Bill 318**  
**Alaska Department of Fish and Game**  
April 7, 2004

**Attachments:**

1. Regulations governing subsistence and personal use fisheries in Cook Inlet and Copper River.
2. Sockeye and Chinook Harvests in Cook Inlet and Copper River Personal Use, Sport, and Subsistence Fisheries.
3. Comparison of non-commercial and commercial sockeye harvests in Upper Cook Inlet from 1990-2002.
4. Comparison of Chitina Personal Use Dipnet and Copper River commercial fishery sockeye harvests from 1985 to 2003.

## **Subsistence Salmon Fisheries in Upper Cook Inlet**

A. Tyonek Subdistrict (in the waters from a point one mile south of the southern edge of the Chuitna River south to the easternmost tip of Granite Point

- 1) May 15 to June 15 from 4:00 p.m. through 8:00 p.m. on Tuesdays, Thursdays, and Fridays
- 2) June 16 through October 15 from 6:00 a.m. through 6:00 p.m. on Saturdays
- 3) The season closes by EO if 4,200 kings have been taken
- 4) Lawful gear are 10 fathom gillnets

Yentna River (in waters outside the Anchorage Mat-Su-Kenai nonsubsistence area described in 5 AAC 99.015(a)(3).

- 1) Limit is 2,500 sockeye salmon
- 2) Lawful gear is a fishwheel

## **Personal Use Salmon Fisheries in Upper Cook Inlet**

A. General Provisions

1. Residents only and must have a valid sport fish license and free PU permit

B. Kasilof Gillnet Fishery

1. Season is from June 15 through June 24
2. fishing occurs from 6:00 a.m. to 11:00 p.m.
3. lawful gear is 10 fathom gillnets
4. annual limits are specified in 5 AAC 77.525 (25 salmon per head of household with 10 additional per dependent)
5. all king salmon are allowed to be retained in this fishery

C. Kasilof Dipnet Fishery

1. Season is June 25 through Aug 7, 24 hours per day
2. annual limit is 25 per head of household, 10 per dependent
3. ALL king salmon must be released immediately

D. Kenai Dipnet Fishery

1. Season is July 10 through July 31
2. fishing occurs from 6:00 a.m. to 11:00 p.m. on Kenai sockeye salmon runs < 2 million
3. on Kenai runs > 2 million commissioner may EO the fishery to 24 hours per day
4. annual limit is 25 per head of household, 10 per dependent
5. annual limit on king salmon is one per household

E. Fish Creek Dipnet Fishery

1. commissioner will open by EO from July 10 through July 31 if the department projects the escapement of sockeye salmon into Fish Creek will be above the upper end of the escapement goal of 70,000 fish
2. annual limit is 25 per head of household, 10 per dependent
3. ALL king salmon must be released immediately

## **Subsistence and Personal Use Salmon Fisheries in the Upper Copper/Upper Susitna Rivers**

**Batzulnetas:** Those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Cr. to approximately ½ mile downstream from the mouth (5 AAC 01.647).

- 1) Season: June 1 through September 1.
- 2) Fishing periods established by E.O. and are either 2d/wk or 3.5d/wk after June.
- 3) A permit is required.
- 4) Fishwheels with livebox or dipnets may be used in the Copper River; dipnets or spears may be used in Tanada Cr.
- 5) Only salmon other than king salmon may be taken.
- 6) Limits are for a household of one 30 salmon, and for a household of 2 the limit is 60 salmon. Upon request permits may be issued for additional salmon.

**Glennallen Subdistrict:** (All waters of the Copper River upstream from the Chitina-McCarthy Bridge to Slana (5 AAC 01.605).

- 1) June 1 through September 30, Continuous season.
- 2) Fishwheels or dipnets.
- 3) Limits are for a household of 1 person 30 salmon, no more than 5 king salmon if taken with a dipnet; for a household of 2 persons, 60 salmon of which no more than 5 king salmon if taken by dipnet; permits for additional salmon will be issued up to 500 salmon for a household of more than 2 persons.
- 4) A permit is required.

**Personal Use Salmon Fisheries-Copper River** (All waters of the Copper River downstream from the Chitina McCarthy bridge to an east-west line crossing the Copper River about 200yds upstream of Haley Creek as designated by ADF&G regulatory markers (5 AAC 01.605).

- 1) June 1 through September 30; opening date and fishing periods established by E.O.
- 2) Dipnets only legal gear type.
- 3) A permit is required.
- 4) Limits for household of 1 are 15 salmon only one of which can be a king salmon; for household of 2 or more persons limit is 30 salmon only one of which can be a king salmon.

Upper Cook Inlet Commercial, Sport, and Personal Use Chinook and Sockeye Salmon Annual Harvest

UCI Commercial Fishery		
Year	Chinook	Sockeye
1990	16,105	3,604,259
1991	13,542	2,178,331
1992	17,171	9,108,353
1993	18,871	4,755,329
1994	19,941	3,565,586
1995	17,893	2,951,827
1996	14,306	3,888,922
1997	13,292	4,176,738
1998	8,124	1,219,242
1999	14,383	2,680,510
2000	7,350	1,322,482
2001	9,295	1,826,833
2002	12,714	2,773,118
2003	18,486	3,472,741
MEAN	14,391	3,394,591

Recreational Fishery				
Year	Kenai River		All other UCI	
	Chinook	Sockeye	Chinook	Sockeye
1990	7,684	120,788	35,091	76,122
1991	9,174	161,602	42,817	119,524
1992	9,753	242,492	65,076	81,664
1993	30,312	137,180	72,865	79,021
1994	27,708	93,616	59,576	94,083
1995	23,168	125,425	44,495	55,566
1996	15,740	186,291	42,853	75,715
1997	15,177	177,133	49,404	74,174
1998	7,450	164,536	40,728	92,249
1999	17,145	200,574	52,012	93,298
2000	16,613	230,983	65,038	106,701
2001	15,189	200,762	47,243	84,320
2002	10,353	225,917	5,342	98,363
2003				
MEAN				

incomplete data

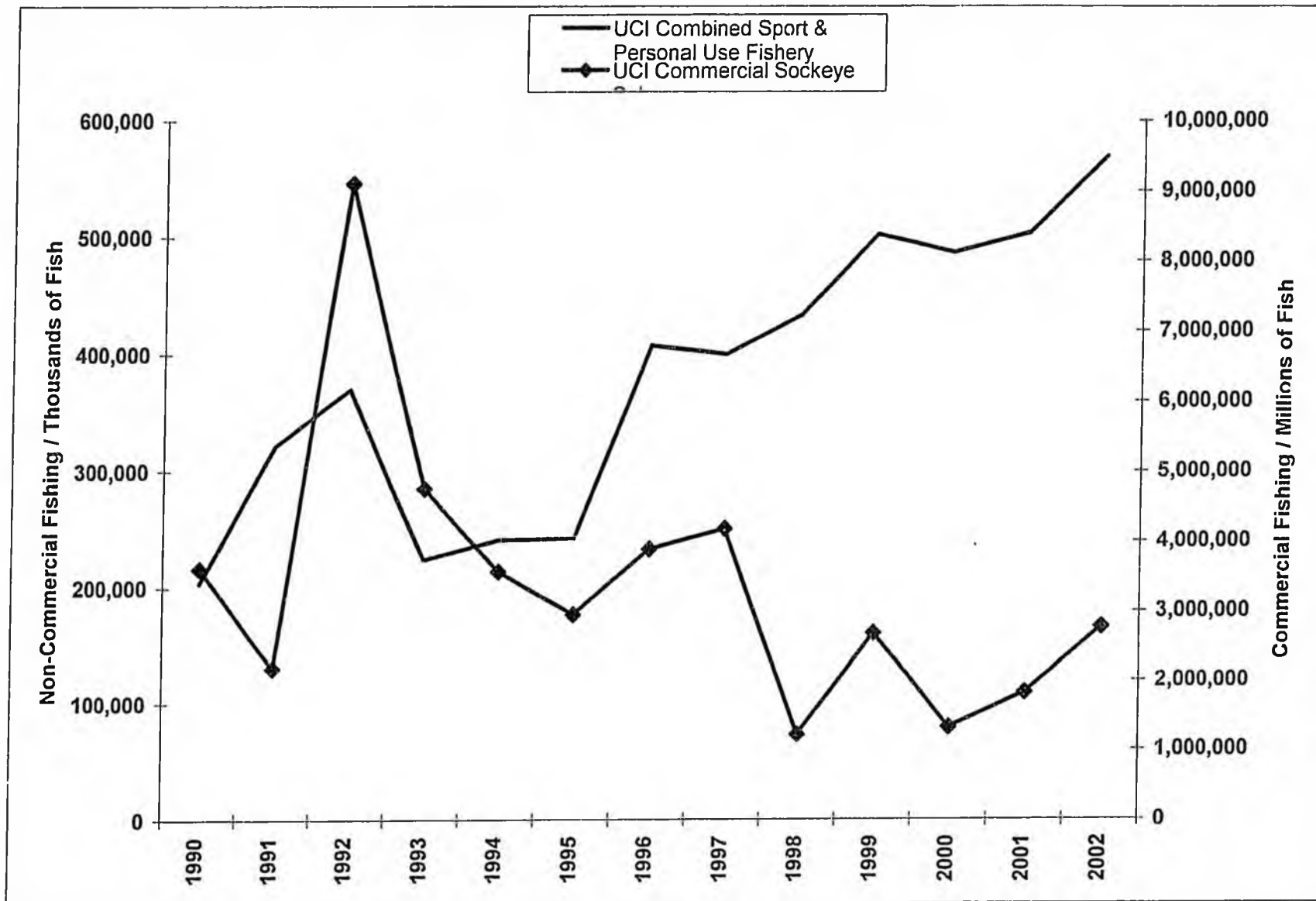
UCI Personal Use Fishery		
Year	Chinook	Sockeye
1990	133	7,123
1991	584	40,610
1992	1,139	46,419
1993	47	7,942
1994	1,501	53,333
1995	1,415	61,602
1996	452	145,545
1997	464	148,940
1998	549	176,581
1999	1,108	208,589
2000	1,102	149,267
2001	1,138	218,688
2002	997	249,864
2003		

Tyonek Subsistence		
Year	Chinook	Sockeye
1990	781	66
1991	902	26
1992	907	75
1993	1370	57
1994	770	85
1995	1317	45
1996	1,039	68
1997	639	101
1998	978	163
1999	1,230	144
2000	1,157	63
2001	976	172
2002	898	76
2003	973	89

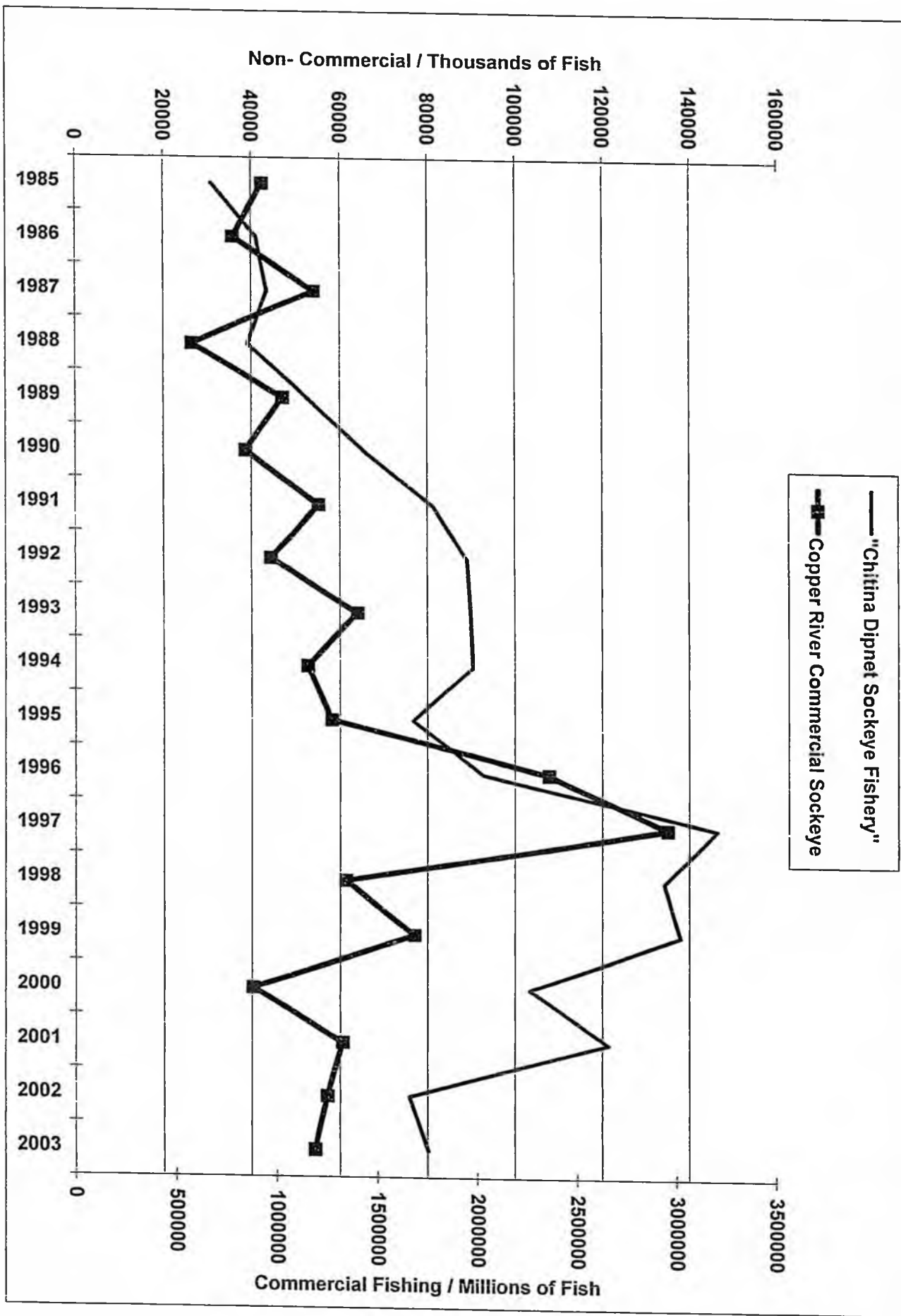
Percentage of annual harvest by user group (does not include Tyonek Subsistence)

Year	Chinook Salmon			Sockeye Salmon		
	Commercial	Sport	PU	Commercial	Sport	PU
1990	27%	72%	0%	95%	5%	0%
1991	20%	79%	1%	87%	11%	2%
1992	18%	80%	1%	96%	3%	0%
1993	15%	85%	0%	95%	4%	0%
1994	18%	80%	1%	94%	5%	1%
1995	21%	78%	2%	92%	6%	2%
1996	20%	80%	1%	91%	6%	3%
1997	17%	82%	1%	91%	5%	3%
1998	14%	85%	1%	74%	16%	11%
1999	17%	82%	1%	84%	9%	7%
2000	8%	91%	1%	73%	19%	8%
2001	13%	86%	2%	78%	12%	9%
2002	43%	53%	3%	83%	10%	7%
2003	100%	0%	0	100%	0%	0%

Combined	
1990	204,033
1991	321,736
1992	370,075
1993	224,143
1994	241,032
1995	242,593
1996	407,551
1997	400,247
1998	433,366
1999	502,461
2000	486,951
2001	503,770
2002	569,144



Source: ADF&G



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Date: April 1, 2004

To: Jerry McCune  
United Fishermen of Alaska

From: Mike Stanley

Subj: CSSB 318 -- "An Act relating to the right of Alaska residents in the consumptive uses of fish and game."

You have asked me to provide an opinion on the subject legislation, which would declare it to be the policy of the State of Alaska "that the consumptive uses of wild fish and game resources by Alaska residents for their sustenance is a very important and fundamental right when considering the management and allocation of those resources." In particular, you are interested in understanding what it may mean to declare consumptive uses a "fundamental right" and what impact this policy declaration might have on decision-making by the Alaska Board of Fisheries or the Alaska Board of Game.

I reviewed the comments submitted by Assistant Attorney General Lance Nelson, dated March 29, 2004. In general, I agree with the views expressed by other attorneys and will not reiterate the points they made. I would, however, offer some additional thoughts.

The proposed legislation raises a number of significant questions. First, it is far from clear what the intent of this provision is and how it would be applied if enacted. Most provisions of the Fish and Game Code, AS 16.05, define the respective authorities of the commissioner of the Alaska Department of Fish and Game (ADF&G) or the boards and impose certain duties upon them. The proposed AS 16.05.005 does neither, but instead is a general statement of policy. But there is no clear guidance as to when the policy applies. For instance, when the commissioner exercises his emergency order (E.O.) authority, he is engaged in "management" of the resource. Is the policy intended to limit the commissioner's E.O. authority or otherwise constrain inseason management? The commissioner routinely opens commercial fisheries by E.O., and someone can always argue that it adversely impacts their use of fish for personal and family consumption. Is such an E.O. invalid, or subject to challenge, because the commissioner allegedly failed to consider consumptive uses by Alaska residents for their sustenance? This is an open question under the bill.

Second, the legislation has constitutional implications. As Utermohle and Nelson discuss, the existence of fundamental rights is a matter of constitutional law, either as set out explicitly in a constitution or as interpreted by a court. If a fundamental right exists, then courts must closely scrutinize regulations impinging on the right, and the state must generally demonstrate a compelling interest before constraining the exercise of that right. The Alaska Supreme Court has not declared that consumptive uses of fish and wildlife in Alaska is a fundamental right and, in my view, is unlikely to do so. Instead, the court generally views management and allocation of fish and wildlife as a form of economic regulation, and will not interfere in the exercise of the commissioner's or the boards' discretion as long as they can demonstrate that their actions have a rational basis and were the product of reasoned decision-making.

The question, however, is whether the proposed legislation would change this analytical framework. That is, instead of the relatively deferential standard of review currently employed by the courts in reviewing decisions affecting fish and game, the declaration of a fundamental right to consumptive uses for sustenance could trigger heightened scrutiny by the courts and lead to a significantly greater role for the judiciary in fish and game management. Increased judicial oversight of fish and game management might be good for natural resource lawyers, but I doubt most managers or users would welcome the change.

I also think there is a question whether CSSB 318, as currently worded, is constitutional. Article VIII, Section 1 states: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." The proposed legislation articulates a different policy, one that is much narrower. I have some doubt whether the proposed legislation would stand in the face of Section 1. At the very least, it raises the question – discussed by Nelson – whether declaring fundamental rights is within the ambit of legislative authority.

Similarly, Article VIII, Section 15 prohibits creation of an "exclusive right or special privilege of fishery." The proposed AS 16.05.005 may also be found in conflict with this clause, at least as it applies to fisheries, since it declares that consumptive uses for sustenance have a privileged status as "very important" and as a "fundamental right." This is not a case of the legislature creating a preference for one beneficial use, as it did with subsistence. Article VIII, Section 4, clearly authorizes such preferences, and the boards are routinely called upon to make allocations among different user groups. If the sponsors want consumptive use for sustenance to have a preference over other consumptive or non-consumptive uses, then they should draft a bill to that effect and prescribe the procedures for implementing it. Instead, the bill as drafted declares that consumptive use for sustenance have special status as a fundamental right, and thus brings Section 15 into the analysis. Again, how the courts would resolve this issue is speculative at this point.

Finally, depending on how the courts interpreted the proposed legislation – which cannot be readily predicted at this stage – there could be a substantial limitation on the discretion of both ADF&G and the two boards when it comes to managing and allocating fish and game resources. The courts have generally held that the commissioner and the boards have broad authority to conserve and develop Alaska's fisheries resources. The Alaska Supreme Court has stressed the need for flexibility in fish and game management. *See, e.g., Native Village of Elim v. State*, 990 P.2d 1, 7-8 (Alaska 1990) (the "primary emphasis of the framers' discussions and the glossary's definition of sustained yield is on the flexibility of the sustained yield requirement and its status as a guiding principle rather than a concrete, predefined process.") As discussed above, courts employ a deferential standard of review and do not substitute their judgment for that of the agencies. In other words, actions by the commissioner and the boards are presumed valid, and a person challenging a particular action faces a rather steep hurdle in convincing a court that it was arbitrary and unreasonable.

However, if consumptive use for sustenance is deemed a "fundamental right," and close judicial scrutiny is required, then the burden will effectively have been reversed, with the state having to demonstrate a compelling interest *before* taking any action that impinges on the fundamental right. One can imagine dozens of regulations on the harvest of fish and wildlife that, while clearly consistent with sound management and sustained yield, may be found not to serve a compelling state interest and thus could be struck down as inconsistent with the policy articulated in CSSB 318. At the very least, one would expect a significant increase in the number of challenges to regulations that, in one way or another, arguably affect consumptive use for sustenance.

In sum, there are many unknowns concerning how the proposed legislation would be interpreted and applied, and I believe there is a considerable risk that the proposed AS 16.05.005 would result in substantial changes in how fish and game management and allocations decisions are made and, especially, how such decisions are reviewed in the courts.

Please let me know if you have any questions or comments on the foregoing analysis.

**United Southeast Alaska Gillnetters**

P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247-2471 Email usa\_gillnetters@att.net

April 7, 2004

The Honorable Scott Ogan, Chair  
Senate Resources Committee  
State Capitol-Room 103  
Juneau, Alaska 99801

Send Via Fax To: 465-3263

Dear Senator Ogan,

The committee substitute for SB 318 would establish a policy for the management of Alaska's fish and game that personal consumption is a "fundamental right when considering the management and allocation of those resources". At face value, this seems a very reasonable policy. When viewed in the context of current management programs and issues, it raises many questions, however. Some examples of these are:

- If the number of applicants for a specific game tag in a specific management area were greater than the number of tags available, would ALL Alaskans applying for the tag need to be accommodated before non-residents could draw for tags? If this were true, the big game guiding business could be severely restricted or eliminated.
- It is currently the policy of the Department of Fish and Game in Ketchikan to issue personal use permits for individuals and families who want to get some fish for their own use. The Department usually requires the fish be taken from a system with adequate escapements to withstand the pressure this personal use creates. Most of the time these systems are remote from Ketchikan and require a boat or plane to access them. Would the policy in CS SB 318 require the Department to allow folks in Ketchikan who do not have a boat to catch their "sustenance" fish from Ketchikan Creek or Ward Creek regardless of whether the fish stocks in these systems could tolerate that much pressure? Would then, the commercial fisheries in the adjoining management areas be restricted to allow more fish to reach these systems? Why do we need this new policy when the personal use needs of Alaskans are being satisfied by the current policies of the Department?
- How does this proposed policy fit with the Federal subsistence regulations that are currently being forced on Alaskans? Is this another attempt to circumvent the rural preference for subsistence that is currently required for Alaska by Federal legislation?

These are just a few of the questions that come to mind with respect to this proposed new policy. The current Federal takeover of fish and game subsistence management has caused significant controversy in Alaska and will probably continue to do so until a procedure is found that will return all fish and game management to the State. This controversy aside, is the management of our fish and game resources being conducted in such a manner that a policy such as this is required to protect the right of our citizens to access these resources? The United Southeast Alaska Gillnetters do not believe this policy is necessary at this time or that it is in the best interest of the State of Alaska. We therefore urge the Senate Resources Committee to vote no on CS SB 318. We thank you for your support of sound resource management and appreciate your consideration of our opposition to CS SB 318.

Yours truly,



Kenneth Duckett  
Executive Director

# STATE OF ALASKA

## Matanuska/Susitna Valley Fish & Game Advisory Committee

Frank H Murkowski, Governor

Wayne Kubat, Chair  
PO Box 874867  
Wasilla, Alaska 99687  
ph. & fax: 376-9568  
email: args@mtaonline.net

March 25<sup>th</sup>, 2004

Senator Lyda Green, Fax: 465-3805  
Senator Scott Ogan, Fax: 465-3265  
Representative Carl Gatto, Fax: 465-2381  
Representative Vic Kohring, Fax: 465-3818  
Representative Beverly Masek, Fax: 465-4822  
Representative Bill Stoltze, Fax: 465-4928

Dear Valley Legislators,

The Mat-Su Fish and Game advisory committee would like to weigh in on the following bills, which we discussed and voted on at our March 24<sup>th</sup>, 2004 advisory committee meeting.

- We **support** Senate Bill 318: An Act relating to the individual right of Alaska residents in the consumptive use of fish and game. "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA: \* **Section 1.** AS 16.05 is amended by adding a new section to read: **Sec. 16.05.005. Policy.** It is the policy of the state that the consumptive use of wild fish and game resources by individual Alaska residents is a very important and fundamental individual right when considering the management and allocation of those resources. This bill would give Alaskans first priority for our fish and game resources as required by the State Constitution, at a time when an increasing number of groups are trying to stop Alaskans from harvesting our own food supplies and trapping our own furs.
- We **oppose** Senate Bill 69. The purpose of this Act is to preserve and enhance the ability of the Board of Fisheries to act as a lay board. To accomplish this goal, this Act requires members of the board to participate in the issues that come before the board even though the members have a personal or financial interest in the matter by virtue of their participation in a fishery. We think it would be difficult for members of the Boards to vote impartially on matters that directly effect their livelihood or that of family members.
- We **oppose** House Bill 396: An Act relating to management of salmon and other fish stocks and salmon fisheries and to the use of funds received by an enhancement facility from the sale of fish." The **bill states** "the state shall be managed consistent with **maximum sustained yield of important and dominant salmon stocks and with** sustained yield of **other** wild fish stocks and may be managed consistent with sustained yield of enhanced fish stocks." This bill is written in such a way as to allow one species of salmon to take priority over all other stocks. For example in Cook Inlet, this bill will allow for the maximum harvest of red salmon at the expense of other salmon stocks. Our stock in upper Cook Inlet would suffer drastically under this management style and other areas of Alaska at the tail end of salmon runs will suffer too!

Thank you for your support on these and other wildlife matters!

Sincerely,

Wayne Kubat - Chairman

# URGENT!! 04/07/04 MEETING!!

## Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.  
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/lolist.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

**From:** Please PRINT the information below. This form must be signed by the sender.

<small>Mr./Ms./Mrs.</small>	<small>First name</small> Cecilia	<small>Initial</small> A	<small>Last name</small> Wiese	<small>J./S./118</small>
<small>Group affiliation (if applicable)</small>				<small>Daytime telephone number</small> 907 424 8200
<small>Mailing address</small> Box 1708, Cordova, AK				<small>Zip code</small> 99574
<small>Residence (street) address if different from mailing address</small> 400 Railroad Row, Cordova, AK				<small>Zip code</small> 99574
<small>Email address</small> wiesefam@ctcok.net			<small>Signature</small> <i>Cecilia Wiese</i>	<small>Date</small> 7 April 2004

**To:** Put a  in the appropriate box(es).

Committees	House members	Senate members																																																																																																																																																
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**Subject:** Fill out the boxes below OR enter a Subject.

<small>HB or SB</small>	<small>Bill number</small>	<small>and check one:</small>	<input checked="" type="checkbox"/> Support	<input type="checkbox"/> Oppose	<input type="checkbox"/> Amend	<small>OR enter a general Subject (LIO staff may modify):</small>
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**Message** Your PRINTED message cannot exceed 50 words or contain any vulgar language.

I	urge	your	opposition	5
CSSB 318.	As proposed, this	legislation	clearly	10
conflicts	with the	established	authorities	15
ADF & G	and the	Boards	of Fisheries and	20
Game to	manage	and allocate	Alaska's fish and	25
game. The	legislature	does not	have the	30
to establish a	"fundamental	right" through		35
statute				40
				45
				50

## Public Opinion Message

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A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/llolist.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

**From:** Please PRINT the information below. This form must be signed by the sender.

Mr./Ms./Mrs.	First name	M.I.	Last name	Z./S./In
MR	HENRY <del>WIESE</del>	M	WIESE	
Group affiliation (if applicable)				Daytime telephone number
C.D.F.U.				907-424-3667
Mailing address				Zip code
PO Box 1708 Cordova, Alaska				99574
Residence (street) address if different from mailing address				Zip code
400 Railroad Row Cordova, Alaska				99574
Email address			Signature	Date
WIESEFAM@CTEAK.net			Henry M. Wiese	4/7/04

**To:** Put a  in the appropriate box(es).

Committees	House members	Senate members																																																																																																						
<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 20px;"><input type="checkbox"/></td><td>Community &amp; Regional Affairs</td></tr> <tr><td><input type="checkbox"/></td><td>Finance (fin)</td></tr> <tr><td><input type="checkbox"/></td><td>Health, Ed., &amp; Social Services</td></tr> <tr><td><input type="checkbox"/></td><td>Judiciary (jud)</td></tr> <tr><td><input type="checkbox"/></td><td>Labor &amp; Commerce (l&amp;c)</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>Resources (res)</td></tr> <tr><td><input type="checkbox"/></td><td>Rules (ris)</td></tr> <tr><td><input type="checkbox"/></td><td>State Affairs (sta)</td></tr> <tr><td><input type="checkbox"/></td><td>Transportation (tra)</td></tr> <tr><td><input type="checkbox"/></td><td>Other:</td></tr> <tr><td><input type="checkbox"/></td><td>Other:</td></tr> </table>	<input type="checkbox"/>	Community & Regional Affairs	<input type="checkbox"/>	Finance (fin)	<input type="checkbox"/>	Health, Ed., & Social Services	<input type="checkbox"/>	Judiciary (jud)	<input type="checkbox"/>	Labor & Commerce (l&c)	<input checked="" type="checkbox"/>	Resources (res)	<input type="checkbox"/>	Rules (ris)	<input type="checkbox"/>	State Affairs (sta)	<input type="checkbox"/>	Transportation (tra)	<input type="checkbox"/>	Other:	<input type="checkbox"/>	Other:	<table style="width: 100%; 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HB or SB	Bill number		and check one:	<input checked="" type="checkbox"/> Support		OR	<input type="checkbox"/> Amend	enter a general Subject (LIO staff may modify):
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I	urge	your	opposition	5
CSSB 318.	As proposed,	this	legislation	10
conflicts	with the	established	authorities	15
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*This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.*

**From:** Please **PRINT** the information below. This form must be signed by the sender.

<input checked="" type="checkbox"/> Mr. / Mrs.	First name <b>Dennis</b>	<input checked="" type="checkbox"/> M.	Last name <b>Zadra</b>		
Group affiliation (if applicable)					Daytime telephone number <b>907 424-3718</b>
Mailing address <b>PO Box 2348, Cordova AK 99574</b>					Zip code <b>99574</b>
Residence (street) address if different from mailing address <b>Glaser Trailer Court #13, Cordova AK</b>					Zip code <b>99574</b>
Email address			Signature <b>Dennis M. Zadra</b>		Date <b>4/07/04</b>

**To:** Put a  in the appropriate box(es).

	House members	Senate members
<b>Committees</b>		
<input type="checkbox"/> H or S	<input type="checkbox"/> Anderson (ade)	<input type="checkbox"/> Kertula (ker)
<input type="checkbox"/> Community & Regional Affairs	<input type="checkbox"/> Berkowitz (ber)	<input type="checkbox"/> Kohring (koh)
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<input type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Coghill (cog)	<input type="checkbox"/> Lynn (lyn)
<input type="checkbox"/> Labor & Commerce (l&c)	<input type="checkbox"/> Crawford (crf)	<input type="checkbox"/> Masek (mas)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Croft (cro)	<input type="checkbox"/> McGuire (mcg)
<input type="checkbox"/> Rules (rls)	<input type="checkbox"/> Dahlstrom (dal)	<input type="checkbox"/> Meyer (mey)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Fate (fht)	<input type="checkbox"/> Morgan (mor)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Moses (mos)
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<input type="checkbox"/> Other:	<input type="checkbox"/> Gal'lo (gal)	<input type="checkbox"/> Rokeberg (rok)
	<input type="checkbox"/> Gruenberg (grn)	<input type="checkbox"/> Samuels (sal)
	<input type="checkbox"/> Guttenberg (gtt)	<input type="checkbox"/> Seaton (san)
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		<input type="checkbox"/> B. Stevens (ste)
		<input type="checkbox"/> G. Stevens (stv)
		<input type="checkbox"/> Theriault (thr)
		<input type="checkbox"/> Wagoner (wag)
		<input type="checkbox"/> Wilken (wlk)

**Subject** Fill out the boxes below **OR** enter a Subject.

HB or SB	Bill number		and check one:	<input checked="" type="checkbox"/> Support	
<b>SB</b>	<b>318</b>			<input type="checkbox"/> Oppose	<b>OR</b> enter a general Subject
				<input type="checkbox"/> Amend	(LIO staff may modify):

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I	urge	opposition	to	CSSB 318 <sup>5</sup>
As	proposed	this	legislation	clearly <sup>10</sup>
conflicts	with	the	established	authorities <sup>15</sup>
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of	Fish	and	Game	to <sup>25</sup>
manage	and	allocate	Alaska's	fish <sup>30</sup>
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not	have	the	authority	to <sup>40</sup>
establish	a	"fundamental	right"	through <sup>45</sup>
statute.				<sup>50</sup>

## Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.  
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/llolist.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

**From:** Please **PP'NT** the information below. This form must be signed by the sender.

<input checked="" type="radio"/> Mr. / Mrs.	First name <b>Gerald</b>	M.I.	Last name <b>Kompkoff</b>	Jr. / Sr. / III
Group affiliation (if applicable) <b>CDFU</b>				Daytime telephone number
Mailing address <b>P.O. Box 2256</b>				Zip code <b>99574</b>
Residence (if not) address if different from mailing address				Zip code
Email address <b>Kompkoff@ctcak.net</b>		Signature <i>Gerald Kompkoff</i>		Date <b>4/7/04</b>

**To:** Put a  in the appropriate box(es).

	House members	Senate members																																																																																																																		
<p style="text-align: center;"><u>Committees</u></p> <p>H or S</p> <table style="width: 100%; border-collapse: collapse;"> <tr><td><input type="checkbox"/></td><td>Community &amp; Regional Affairs</td></tr> <tr><td><input type="checkbox"/></td><td>Finance (fin)</td></tr> <tr><td><input type="checkbox"/></td><td>Health, Ed., &amp; Social Services</td></tr> <tr><td><input type="checkbox"/></td><td>Judiciary (jud)</td></tr> <tr><td><input type="checkbox"/></td><td>Labor &amp; Commerce (l&amp;c)</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>Resources (res)</td></tr> <tr><td><input type="checkbox"/></td><td>Rules (rls)</td></tr> <tr><td><input type="checkbox"/></td><td>State Affairs (sta)</td></tr> <tr><td><input type="checkbox"/></td><td>Transportation (tra)</td></tr> <tr><td><input type="checkbox"/></td><td>Other:</td></tr> <tr><td><input type="checkbox"/></td><td>Other:</td></tr> </table> <p style="text-align: center;"><u>Caucuses</u></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td><input type="checkbox"/></td><td>Anchorage (age)</td></tr> <tr><td><input type="checkbox"/></td><td>Bush (bus)</td></tr> <tr><td><input type="checkbox"/></td><td>Fairbanks/Interior (int)</td></tr> <tr><td><input type="checkbox"/></td><td>Matsu (mat)</td></tr> <tr><td><input type="checkbox"/></td><td>Majority (mjr)</td></tr> <tr><td><input type="checkbox"/></td><td>Minority (mnr)</td></tr> </table>	<input type="checkbox"/>	Community & Regional Affairs	<input type="checkbox"/>	Finance (fin)	<input type="checkbox"/>	Health, Ed., & Social Services	<input type="checkbox"/>	Judiciary (jud)	<input type="checkbox"/>	Labor & Commerce (l&c)	<input checked="" type="checkbox"/>	Resources (res)	<input type="checkbox"/>	Rules (rls)	<input type="checkbox"/>	State Affairs (sta)	<input type="checkbox"/>	Transportation (tra)	<input type="checkbox"/>	Other:	<input type="checkbox"/>	Other:	<input type="checkbox"/>	Anchorage (age)	<input type="checkbox"/>	Bush (bus)	<input type="checkbox"/>	Fairbanks/Interior (int)	<input type="checkbox"/>	Matsu (mat)	<input type="checkbox"/>	Majority (mjr)	<input type="checkbox"/>	Minority (mnr)	<table style="width: 100%; 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**Subject:** Fill out the boxes below **CR** enter a Subject.

HB or SS	Bill number	and check one:	<input type="checkbox"/> Support	OR	
			<input checked="" type="checkbox"/> Oppose		enter a general Subject
			<input type="checkbox"/> Amend		(LIO staff may modify):

**Message** Your **PRINTED** message cannot exceed 50 words or contain any vulgar language.

I	urge	your	opposition	5
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conflicts	with the	established	authorities	15
ADF&G	and the	Boards	of Fisheries	20
Game to	manage	and allocate	Alaska's fish and	25
game. The	legislature	does not	have the authority	30
to establish a	"fundamental	right" through	statute	35
				40
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# UNITED FISHERMEN OF ALASKA

April 7, 2004

211 Fourth Street, Suite 110  
Juneau, Alaska 99801-1172  
(907) 586-2820  
(907) 463-2545 Fax  
E-Mail: [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org)  
[www.ufa-fish.org](http://www.ufa-fish.org)

Senator Scott Ogan, Chair  
Senate Resources Committee  
Alaska State Legislature  
State Capitol (Mail Stop 3100)  
Juneau, AK 99801-1182

Dear Senator Ogan,

United Fishermen of Alaska vigorously opposes the current Committee Substitute for Senate Bill 318 or any other form or version of the content of this legislation in Senate Resources or any other committee of either body of the legislature.

Although UFA recognizes the importance of fisheries resource use and consumption by all Alaska residents, including UFA members, to hunt and gather salmon for sustenance, this legislation far exceeds this mandate and causes potentially far-reaching consequences that threaten to cripple the basic economy and social structure of coastal Alaska.

The concept of management of fish and game for the sustenance of Alaska residents is alive and working today, through regulation by the ADFG, the Board of Fisheries and the Board of Game. Certainly there is a balance in the wants and needs regarding sustenance between personal use, subsistence, commercial, sport charter, fishing lodges and big game guiding. The idea of placing personal use into its own statute as a fundamental right raises serious concerns regarding how this would be implemented statewide and the impact it could have on accomplishing the basic needs that sustain life in coastal Alaska. These needs include food, shelter, medical care and education for families reliant upon commercial fishing, guided sport fishing and hunting for sustaining their basic necessities.

With the language of CS SB318 instituted, almost any action in management of fish and game could be called into question and brought to court. UFA has long held the opinion that courts of law are a very poor forum in which to decide management of fishery issues.

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association  
Bristol Bay Reserve • Chignik Regional Aquaculture Association • Chignik Seiners Association • Concerned Area "M" Fishermen • Cordova District Fishermen United  
Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association  
Old Harbor Fisherman's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association  
Seafood Producers Cooperative • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association  
United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

United Fishermen of Alaska represents 32 Alaska commercial fishing organizations, and hundreds of individual fishermen and related businesses, altogether representing over 10,000 Alaska commercial fishermen.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Thorstenson, Jr.", with a stylized, cursive script.

Bob Thorstenson, Jr.  
President

COMMENTS ON Senate Bill 318

By

Department of Fish and Game

April 2, 2004

At the Senate Resources committee meeting on March 26, the Department of Fish and Game was asked to evaluate how SB 318 would impact guided sport fishing, big game guiding and non-resident hunting; if SB 318 would make management more difficult; and finally, if SB 318 might change the allocation schemes, using the Cook Inlet and Prince William Sound/Copper River fisheries as examples when answering this question. We will do our best to answer your questions. I will provide some general comments and then Doug Mecum, Director of the Division of Commercial Fisheries will provide more specific information.

Alaska Statute 16.05.258 directs the Board of Game to provide the highest priority to subsistence use. Alaska Statute 16.05.255 (d) requires that the taking of moose, deer, elk, and caribou by residents for personal or family consumption, has preference over taking by nonresidents.

It is more complex on the fishery side because of the large commercial fisheries in many areas and the importance of personal use fisheries as well as recreational and subsistence use fisheries. The subsistence statute, AS 16.05.258, directs the Board of Fisheries, as well as the Board of Game, to provide a priority for subsistence use, but no statute establishes a priority among the other uses of fishery resources.

However, AS 16.05.251 gives the Board of Fisheries authority to "allocate fishery resources among personal use, sport, guided sport, and commercial fisheries." This statute also establishes seven criteria the Board may use to make allocation decisions:

- (1) history of each personal use, sport, guided sport, and commercial fishery;
- (2) number of residents and nonresidents who have participated in each fishery in the past, and the number of residents and nonresidents who can reasonably be expected to participate in the future;
- (3) importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;**

- (4) availability of alternative fisheries resources;
- (5) importance of each fishery to the economy of the state;
- (6) importance of each fishery to the economy of the region and local area in which the fishery is located;
- (7) importance of each fishery in providing recreational opportunities for residents and nonresidents.

The third criterion relates directly to the use of fish for sustenance; it says the Board should consider "the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption." Consequently, the Board of Fisheries adopted regulation 5 AAC 39.205 that requires these seven criteria be considered when making allocation decisions.

Since the Board of Game already has direction from the legislature on this issue, and the Board of Fisheries already considers and evaluates the importance of each fishery for personal and family consumption, SB 318 does not seem to be necessary.

It is difficult to predict the impact that passage of SB 318 would have on the management of game and fish populations and allocation decisions made by the Boards. I think the biggest impact on both fisheries and wildlife management will be brought about over time, through litigation over use of the words "fundamental right." At this time, we cannot give specific examples of changes to expect or provide a thorough risk analysis of adverse court rulings. This is because no case law exists on this subject -- no state has risked making hunting and fishing a fundamental right, thereby jeopardizing their ability to then regulate hunting and fishing.

I recommend caution when considering this bill because attorneys from the Department of Law, the Legislature, and Paul Lenzini, long-time, eminent, council to the International Association of Fish and Wildlife Agencies, all give similar advice. They urge that hunting and fishing not be called a "fundamental right" because it could jeopardize a states' ability to effectively regulate hunting and fishing.

While Mr. Lenzini has not seen nor commented on SB 318, several years ago when various states were considering amending their constitutions to make hunting and fishing a fundamental right, he urged all states to not use the words "fundamental right" because it could then jeopardize their ability to regulate hunting and fishing.

I understand the desire to ensure that the use of fish and game for food by Alaskans be given more consideration by the Board of Fisheries, and acknowledge that the Legislature has the authority to provide specific direction to the Boards to accomplish this. However, the current process seems to serve the state well.

That concludes my comments and I will let Doug Mecum answer the questions you had about allocations of our fishery resources.

# Alaska State Legislature

## Legislative Affairs Agency

Information and Teleconferencing

716 W. 4<sup>th</sup> Avenue, Suite 200 Anchorage, AK 99501-2133

Phone (907) 269-0111 Fax (907) 269-0229

Email: Anchorage\_LIO@legis.state.ak.us



To: Sen. Ogen, SPES Chair

Fax: 465-3265

Comments: Written (T) from Paul Jeshin (5 pgs)

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\_\_\_\_\_  
\_\_\_\_\_

Pages: (inc. cover sheet): 6

Date: 4/7/04

Time: \_\_\_\_\_

Transmitted By: J. HAYS

or "high preference" or  
"holier than thou" standing

SENATE RESOURCES COMMITTEE HEARING - April 7, 2004

TESTIMONY CONCERNING SB 318

Mr. Chairman, members of the committee, the Alaska constitution does not grant special "individual rights" to hunters over non-hunters, and therefore this bill shouldn't either. I see this legislation as a form of prejudicial bigotry aimed at the 75 percent of Alaskans who are non-hunters. Too much power already is concentrated in the hands of hunters. All wildlife regulatory decisions on state land are made by the Board of Game which is composed solely of people with a hunting background. Non-hunters need not apply.

When it comes to the management of our wildlife hunters and non-hunters should be working together as equals. The Constitution of Alaska states that wildlife is intended for the "common use" of all Alaskans. Non-hunters care about how our wildlife is managed just as much as hunters. I would recommend that the Senate Resources Committee reject SB 318 as discriminatory and prejudicial, and consider instead SB 343, the bill that would create a Board of Wildlife. It says that, "The membership of the board, taken as a whole, shall directly reflect all of the citizen's various uses of game for sport and subsistence hunting, trapping, nonconsumptive uses, tourism, and scientific study in a comprehensive and fair manner."

Unlike SB 318, SB 343 would create a level playing field, whereby the diversity of wildlife interests and values held by most Alaskans would be reflected within the Board's composition. According to a state wide survey carried out by Dittman Research Corporation, 83 percent of voters favor a Board of Wildlife composed of hunters and non-consumptive users over an all hunter-trapper board. Seventy percent of hunters also indicated during the survey that they wanted a Board of Wildlife, which tells us that fairness in decision making is very much a core value of all Alaskans.

Mr. Chairman, members of the committee, by supporting SB 343 you would go a long ways toward improving the ability of hunters and non-hunters to work together in resolving complex wildlife issues for the benefit of all Alaskans. SB 318 does just the opposite.

Paul Joslin, PhD.  
Wildlife Director  
Alaska Wildlife Alliance  
907-277-9816 Phone  
907-250-5944 Cell  
907-277-7423 Fax  
<http://www.akwildlife.org>